

Page 1	Page 3
<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF OHIO</p> <p>3 EASTERN DIVISION</p> <p>4 - - -</p> <p>5 MELISSA YATSKO and DARIAN)</p> <p>6 ALLEN, Co-Admrs. of the)</p> <p>7 Estate of Thomas Yatsko,)</p> <p>8 Plaintiffs,) Case No.</p> <p>9 -vs-) 1:18-cv-00814</p> <p>10 SERGEANT DEAN GRAZIOLLI,) Judge Dan A.</p> <p>11 et al.,) Polster</p> <p>12)</p> <p>13 Defendants.)</p> <p>14 - - - o0o - - -</p> <p>15 Videotaped deposition of SERGEANT DEAN</p> <p>16 GRAZIOLLI, a Defendant herein, being called</p> <p>17 by the Plaintiffs as if upon cross-</p> <p>18 examination under the statute, and taken</p> <p>19 before Angelika P. Shane, a Notary Public</p> <p>20 within and for the State of Ohio, pursuant</p> <p>21 to agreement of counsel, on Wednesday, the</p> <p>22 30th day of January, 2019, at 1:00 p.m., at</p> <p>23 the offices of Spangenberg, Shibley & Liber,</p> <p>24 LLP, 1001 Lakeside Avenue, Cleveland, Ohio.</p> <p>25 - - - o0o - - -</p>	<p>1 ON BEHALF OF THE DEFENDANTS</p> <p>2 CORNER ALLEY FOURTH LIMITED</p> <p>3 PARTNERSHIP, CORNER ALLEY UPTOWN, LLC,</p> <p>4 CORNER ALLEY, LLC, MRN DEVELOPMENT</p> <p>5 CORPORATION, MRN ENTERPRISES, LLC AND</p> <p>6 MRN INVESTMENT GROUP, LLC:</p> <p>7</p> <p>8 Collins, Roche, Utley & Garner, LLC</p> <p>9 Patrick M. Roche, Esq.</p> <p>10 800 Westpoint Pkwy. Suite 1100</p> <p>11 Westlake, Ohio 44145</p> <p>12 216-916-7730</p> <p>13 pmroche@cruglaw.com</p> <p>14</p> <p>15</p> <p>16 ON BEHALF OF THE DEFENDANT</p> <p>17 CITY OF CLEVELAND:</p> <p>18</p> <p>19 City of Cleveland Law Department</p> <p>20 Michael J. Pike, Esq.</p> <p>21 601 Lakeside Ave. Room 106</p> <p>22 Cleveland, Ohio 44114</p> <p>23 216-664-2775 (Direct)</p> <p>24 mpike@city.cleveland.oh.us</p> <p>25</p>
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<p>1 APPEARANCES:</p> <p>2</p> <p>3 ON BEHALF OF THE PLAINTIFFS:</p> <p>4</p> <p>5 Spangenberg Shibley & Liber LLP</p> <p>6 Nicholas A. DiCello, Esq.</p> <p>7 Jeremy A. Tor, Esq.</p> <p>8 Kevin C. Hulick, Esq.</p> <p>9 1001 Lakeside Avenue East Suite 1700</p> <p>10 Cleveland, Ohio 44114</p> <p>11 216-696-3232</p> <p>12 ndicello@spanglaw.com</p> <p>13 jtor@spanglaw.com</p> <p>14 khulick@spanglaw.com</p> <p>15</p> <p>16</p> <p>17 ON BEHALF OF THE DEFENDANT</p> <p>18 SERGEANT DEAN GRAZIOLLI:</p> <p>19</p> <p>20 David M. Leneghan, Esq.</p> <p>21 200 Treeworth Blvd. Suite 200</p> <p>22 Broadview Heights, Ohio 44147</p> <p>23 440-838-4260</p> <p>24 leneghanlaw@yahoo.com</p> <p>25</p>	<p>1 ON BEHALF OF SAFECO INSURANCE COMPANY</p> <p>2 OF INDIANA:</p> <p>3</p> <p>4 Frost Brown Todd, LLC</p> <p>5 Frank S. Carson, Esq.</p> <p>6 10 West Broad Street</p> <p>7 One Columbus Suite 2300</p> <p>8 Columbus, Ohio 43215</p> <p>9 614-464-1211</p> <p>10 fcarson@fbtlaw.com</p> <p>11</p> <p>12</p> <p>13 VIDEOGRAPHER: George Tackla</p> <p>14</p> <p>15 - - -</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1	OBJECTION INDEX		1	VIDEOGRAPHER: We're on the	
2	BY PAGE/LINE		2	record. Will you please swear in	
3	Mr. Roche 36-9		3	the witness?	
4	Mr. Roche 37-12		4	---	
5	Mr. Roche 38-7		5	SERGEANT DEAN GRAZIOLLI, of	
6	Mr. Pike 41-3		6	lawful age, a Defendant herein, having been	
7	Mr. Pike 41-9		7	first duly sworn, as hereinafter certified,	
8	Mr. Pike 45-11		8	deposes and says as follows:	
9	Mr. Pike 46-7		9	---	
10	Mr. Pike 46-17		10	CROSS-EXAMINATION OF SERGEANT DEAN GRAZIOLLI	
11	Mr. Pike 50-11		11	BY MR. TOR:	
12	Mr. Pike 58-9		12	Q Good afternoon, sir.	
13	Mr. Pike 59-19		13	A Good afternoon.	
14	Mr. Pike 70-13		14	Q State your full name for the record,	
15	Mr. Leneghan 144-22		15	please.	
16	Mr. Pike 145-1		16	A Dean Victor Graziolli.	
17	Mr. Pike 145-13		17	Q And your date of birth?	
18	Mr. Roche 154-4		18	A	
19	Mr. Pike 156-16		19	Q What is your home address?	
20	Mr. Roche 160-1		20	A	
21	Mr. Roche 168-21		21		
22	Mr. Leneghan 204-13		22	Q How long have you lived there?	
23	Mr. Pike 205-20		23	A Almost 20 years.	
24	Mr. Roche 205-22		24	Q Who lives there with you?	
25	Mr. Pike 207-20		25	A No one, just myself.	
Page 6			Page 8		
1	BY PAGE/LINE		1	Q Was that your home address as of	
2	Mr. Pike 213-15		2	January 13th, 2018?	
3	Mr. Pike 214-19		3	A Did you say 2018?	
4	Mr. Roche 222-22		4	Q Correct.	
5	Mr. Pike 248-6		5	A Yes, it is.	
6			6	Q Was anyone living with you at that	
7			7	address at that time?	
8			8	A No.	
9			9	Q What is your work address?	
10	---		10	A 881 East 152nd Street.	
11			11	Q And what is that?	
12			12	A It's the Cleveland Division of Police,	
13			13	District Five.	
14			14	Q Are you married, sir?	
15			15	A I am not.	
16			16	Q Have you ever been married?	
17			17	A Yes.	
18			18	Q How many times?	
19			19	A Two times.	
20			20	Q And you've been divorced two times?	
21			21	A I have.	
22			22	Q To whom was your first marriage?	
23			23	A Kristine Wagner.	
24			24	Q And what year did you marry her?	
25			25	A 1996.	

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<p>1 Q What year did you divorce?</p> <p>2 A 2000.</p> <p>3 Q And your second marriage?</p> <p>4 A Lanett Ventura.</p> <p>5 Q What year did you get married?</p> <p>6 A 2013 to last year, 2018.</p> <p>7 Q Are you still a Cleveland police</p> <p>8 officer?</p> <p>9 A Yes.</p> <p>10 Q What's your current rank?</p> <p>11 A Sergeant of Police.</p> <p>12 Q All right, sir, you understand you're</p> <p>13 here to have your deposition taken in this</p> <p>14 civil lawsuit brought on behalf of Thomas</p> <p>15 Yatsko's parents?</p> <p>16 A I do.</p> <p>17 Q You understand you're named as a</p> <p>18 defendant in this case?</p> <p>19 A I do.</p> <p>20 Q And you understand that in addition to</p> <p>21 yourself, the City of Cleveland and Corner</p> <p>22 Alley Uptown, LLC are named defendants in</p> <p>23 this case?</p> <p>24 A Yes.</p> <p>25 Q Have you ever had your deposition taken</p>	<p>1 Q Okay. So other than that one time</p> <p>2 having had your deposition taken, can you</p> <p>3 think of any other times you've had your</p> <p>4 deposition taken?</p> <p>5 A No.</p> <p>6 Q Have you ever testified in court?</p> <p>7 A I have.</p> <p>8 Q In a civil case?</p> <p>9 A No, I don't recall.</p> <p>10 Q But in criminal cases?</p> <p>11 A Yes.</p> <p>12 Q All right. I'm sure your lawyer</p> <p>13 explained the ground rules. You are</p> <p>14 represented by a lawyer here today?</p> <p>15 A I am, yes.</p> <p>16 Q Who's your lawyer?</p> <p>17 A David Leneghan.</p> <p>18 Q Okay. I'm going to go over the ground</p> <p>19 rules with you.</p> <p>20 A Okay.</p> <p>21 Q This is a deposition. I'll be asking</p> <p>22 questions and you'll be providing the</p> <p>23 answers, okay?</p> <p>24 A Okay.</p> <p>25 Q It's important that you answer verbally</p>
Page 10	Page 12
<p>1 before?</p> <p>2 A Concerning this?</p> <p>3 Q Ever in any case.</p> <p>4 A I think once in an accident, accident</p> <p>5 case.</p> <p>6 Q Like a personal injury case?</p> <p>7 A It was a -- it was just a car accident</p> <p>8 that I think we did the paperwork on.</p> <p>9 Q Were you injured in that car --</p> <p>10 A I was not, no.</p> <p>11 Q Were you the responsible driver in that</p> <p>12 case?</p> <p>13 A No.</p> <p>14 Q Okay. Well, Just tell me a little bit</p> <p>15 about the case.</p> <p>16 A Just was the investigating officer on</p> <p>17 it.</p> <p>18 Q I see.</p> <p>19 A Did the crash report.</p> <p>20 Q So you were essentially a witness in</p> <p>21 that case?</p> <p>22 A No.</p> <p>23 Q Doesn't matter. When was that</p> <p>24 deposition?</p> <p>25 A I don't recall when it was.</p>	<p>1 because we have a court reporter here.</p> <p>2 Understood?</p> <p>3 A Mm-hmm, yes.</p> <p>4 Q Okay. Wait for me to finish my</p> <p>5 questions before you answer, okay?</p> <p>6 A Yes.</p> <p>7 Q And I'll try to do the same, I'll try</p> <p>8 not to cut you off, okay?</p> <p>9 A Yes.</p> <p>10 Q If you don't understand my question,</p> <p>11 you need to tell me that, okay?</p> <p>12 A Okay.</p> <p>13 Q I'm going to rely on you to tell me you</p> <p>14 don't understand the question, not any of</p> <p>15 the lawyers around the table, okay?</p> <p>16 A Okay.</p> <p>17 Q All right. You understand you're under</p> <p>18 oath right now?</p> <p>19 A I do.</p> <p>20 Q And this is the same oath that you</p> <p>21 would take at trial in this case?</p> <p>22 A I do.</p> <p>23 Q Okay. Is this an important oath you</p> <p>24 think?</p> <p>25 A Very important.</p>

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<p>1 Q Okay. Tell me why it's important.</p> <p>2 A It's about the truth.</p> <p>3 Q As a police officer, are you aware of</p> <p>4 the penalties for lying under oath?</p> <p>5 A I am.</p> <p>6 Q What are the penalties?</p> <p>7 A You can face criminal -- criminal time,</p> <p>8 criminal repercussions.</p> <p>9 Q Perjury?</p> <p>10 A Yes.</p> <p>11 Q Sir, do you have any vision problems?</p> <p>12 A I do not.</p> <p>13 Q Do you wear prescription glasses or</p> <p>14 prescription contacts?</p> <p>15 A I do not.</p> <p>16 Q Have you ever?</p> <p>17 A I wear reading glasses. That's about</p> <p>18 it.</p> <p>19 Q Okay. Are those prescription reading</p> <p>20 glasses or --</p> <p>21 A Yeah.</p> <p>22 Q They are. Okay. Do you use glasses</p> <p>23 for any other purpose other than reading?</p> <p>24 A No.</p> <p>25 Q Okay. Do you have any hearing</p>	<p>1 A No.</p> <p>2 Q You attended the deposition of Deleon</p> <p>3 McDuffie; is that correct?</p> <p>4 A I did.</p> <p>5 Q Did you take any notes during his</p> <p>6 deposition?</p> <p>7 A I did not.</p> <p>8 Q Did you take any notes after the</p> <p>9 deposition?</p> <p>10 A I did not.</p> <p>11 Q Did you talk with anybody about his</p> <p>12 deposition testimony?</p> <p>13 A No.</p> <p>14 Q Have you reviewed the deposition</p> <p>15 transcript of Breann Steele? That was the</p> <p>16 blond woman who was on the patio at the time</p> <p>17 of your interaction with Thomas Yatsko.</p> <p>18 A No.</p> <p>19 Q Have you read her deposition?</p> <p>20 A I have not.</p> <p>21 Q Has anyone told you what her testimony</p> <p>22 is?</p> <p>23 A No.</p> <p>24 Q Have you reviewed any documents related</p> <p>25 to this case in preparation for your</p>
Page 14	Page 16
<p>1 problems?</p> <p>2 A No.</p> <p>3 Q Have you ever had any hearing</p> <p>4 problems?</p> <p>5 A No.</p> <p>6 Q Are you currently on any medication</p> <p>7 that you think might affect your memory?</p> <p>8 A No, I don't believe so.</p> <p>9 Q Are you on any medication that you</p> <p>10 think might affect your ability to testify</p> <p>11 truthfully and accurately?</p> <p>12 A No.</p> <p>13 Q Okay. All right, sir, will you please</p> <p>14 tell me everything that you did to prepare</p> <p>15 for this deposition.</p> <p>16 A I didn't do anything.</p> <p>17 Q Did you meet with your lawyer?</p> <p>18 A I met with my attorney, yes.</p> <p>19 Q Okay. And when did you meet with your</p> <p>20 lawyer?</p> <p>21 A Today.</p> <p>22 Q Any other times?</p> <p>23 A No.</p> <p>24 Q Was anyone else present during your</p> <p>25 meeting with your lawyer?</p>	<p>1 deposition?</p> <p>2 A No, I have not.</p> <p>3 Q Were you interviewed at any point by</p> <p>4 the Cuyahoga County Sheriff's Office related</p> <p>5 to the incident that occurred on January</p> <p>6 13th, 2018?</p> <p>7 A No.</p> <p>8 Q You were not interviewed?</p> <p>9 A I was not.</p> <p>10 Q Were you asked to be interviewed by</p> <p>11 that office?</p> <p>12 A Yes.</p> <p>13 Q And what was your response?</p> <p>14 A By the advice of counsel, I declined.</p> <p>15 Q And how did you communicate to them</p> <p>16 that you declined? Was this over the phone,</p> <p>17 e-mail or some other format?</p> <p>18 A I'm not sure how the attorney</p> <p>19 responded.</p> <p>20 Q So you relied on your attorney to</p> <p>21 communicate to the sheriff's office?</p> <p>22 A That's correct.</p> <p>23 Q I understand. And what was the basis</p> <p>24 for declining to be interviewed by the</p> <p>25 sheriff's office?</p>

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<p>1 A Because of the ongoing investigation.</p> <p>2 Q The ongoing criminal investigation?</p> <p>3 A Correct.</p> <p>4 Q When was it that they reached out to</p> <p>5 you or your attorney to ask to interview</p> <p>6 you?</p> <p>7 A It was last year. I would say -- I</p> <p>8 would say the springtime.</p> <p>9 Q I'll press you a little bit. Could you</p> <p>10 be more precise in terms of giving me a</p> <p>11 month that you think that the sheriff's</p> <p>12 office reached out to you?</p> <p>13 A No, I'm sorry, I cannot.</p> <p>14 Q And how did they contact you?</p> <p>15 A Through the attorney.</p> <p>16 Q Mr. Leneghan?</p> <p>17 A No.</p> <p>18 Q Which attorney was it?</p> <p>19 A Bob Phillips.</p> <p>20 Q Was Bob Phillips an attorney provided</p> <p>21 to you through the FOP?</p> <p>22 A He is the FOP attorney.</p> <p>23 Q He is the FOP attorney?</p> <p>24 A Right.</p> <p>25 Q What does that mean? Does that mean</p>	<p>1 reached out to interview you with respect to</p> <p>2 the criminal investigation?</p> <p>3 A As far as I'm aware, yes.</p> <p>4 Q Okay. Have you been provided any</p> <p>5 documents related to that criminal</p> <p>6 investigation?</p> <p>7 A I have not.</p> <p>8 Q Do you have any idea what has happened</p> <p>9 with respect to that criminal</p> <p>10 investigation?</p> <p>11 A Yes.</p> <p>12 Q What is your understanding?</p> <p>13 A That the investigation is now with the</p> <p>14 Franklin County prosecutor's office.</p> <p>15 Q And are you aware of any action that</p> <p>16 the Franklin County prosecutor's office has</p> <p>17 taken with respect to the case?</p> <p>18 A I am not.</p> <p>19 Q Have you been contacted by them?</p> <p>20 A Again, through the attorney.</p> <p>21 Q Your attorney has been contacted by the</p> <p>22 prosecutor's office?</p> <p>23 A Correct.</p> <p>24 Q Same attorney?</p> <p>25 A Yes.</p>
Page 18	Page 20
<p>1 anytime a police officer might need an</p> <p>2 attorney, that would be the attorney</p> <p>3 representing them?</p> <p>4 A It could be him.</p> <p>5 Q Okay. When did Bob Phillips become</p> <p>6 your attorney with respect to this matter?</p> <p>7 A I would say probably 2002 when I became</p> <p>8 a sergeant.</p> <p>9 Q Okay. Let me ask the question a little</p> <p>10 bit better.</p> <p>11 When did Bob Phillips become your</p> <p>12 attorney with respect to the criminal and/or</p> <p>13 civil liability arising out of the incident</p> <p>14 on January 13th, 2018?</p> <p>15 A When the sheriff's department contacted</p> <p>16 him through the union.</p> <p>17 Q In the springtime?</p> <p>18 A Yes.</p> <p>19 Q Okay. So you did not have an</p> <p>20 attorney-client relationship with him with</p> <p>21 respect to the incident on January 13th,</p> <p>22 2018 before that point?</p> <p>23 A Correct.</p> <p>24 Q Was that the one and only time, as far</p> <p>25 as you're aware, that the sheriff's office</p>	<p>1 Q When was that? When did they reach out</p> <p>2 to your attorney?</p> <p>3 A I would say it was the first week of</p> <p>4 this year.</p> <p>5 Q And what was your attorney's response?</p> <p>6 A I believe his response was to them that</p> <p>7 I was not going to provide them with a</p> <p>8 statement.</p> <p>9 Q Do you know if they were asking for a</p> <p>10 written statement from you or whether they</p> <p>11 were asking to interview you or take your</p> <p>12 testimony under oath? Do you have any idea</p> <p>13 what they wanted?</p> <p>14 A I remember reading a voluntary</p> <p>15 statement. They asked me if I wanted to</p> <p>16 give a voluntary statement.</p> <p>17 Q And was it your understanding that that</p> <p>18 would be provided in writing, that you would</p> <p>19 write out your statement or that you would</p> <p>20 give it verbally in a setting like this?</p> <p>21 A I think either/or.</p> <p>22 Q So you didn't get into the details of</p> <p>23 it, they just asked for a voluntary</p> <p>24 statement and your attorney declined?</p> <p>25 A Right, yes.</p>

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<p>1 Q And that's what you wanted, I presume?</p> <p>2 A Yes.</p> <p>3 Q Have you at any point watched the</p> <p>4 surveillance video from The Corner Alley</p> <p>5 from the night of the incident?</p> <p>6 A I have not.</p> <p>7 Q Has anybody told you what the video</p> <p>8 shows?</p> <p>9 A No.</p> <p>10 Q Have you been curious to know what the</p> <p>11 video shows?</p> <p>12 A I don't have an answer for that. I</p> <p>13 don't -- I've never thought about that.</p> <p>14 Q You don't have an interest in seeing</p> <p>15 what's on the video?</p> <p>16 A No.</p> <p>17 Q All right. You provided some written</p> <p>18 discovery answers in this case through your</p> <p>19 attorney, correct?</p> <p>20 A I did.</p> <p>21 Q Okay. Those were interrogatories that</p> <p>22 my office sent to you through your attorney,</p> <p>23 correct?</p> <p>24 A Correct.</p> <p>25 Q All right. And you provided answers to</p>	<p>1 Q Rob Tucker?</p> <p>2 A Rob Tucker. Sergeant Jason -- I can't</p> <p>3 recall his last name, and then there's a</p> <p>4 third sergeant. I can't recall the third</p> <p>5 sergeant's name.</p> <p>6 Q Anyone else from the Internal Affairs</p> <p>7 Division that you spoke to about this case?</p> <p>8 A No.</p> <p>9 Q When did you speak with these</p> <p>10 individuals about the incident?</p> <p>11 A It was only a few days after the</p> <p>12 incident.</p> <p>13 Q Where was it that you spoke with them?</p> <p>14 A It was at the Justice Center, in their</p> <p>15 offices.</p> <p>16 Q What did they ask you?</p> <p>17 A They asked me specific questions.</p> <p>18 Q And did you answer those questions?</p> <p>19 A Yes.</p> <p>20 Q Do you know if your conversation with</p> <p>21 these individuals, these investigators, was</p> <p>22 recorded either by video or audio or by</p> <p>23 stenographic means like a court reporter?</p> <p>24 A I believe by video and audio.</p> <p>25 Q Were you under oath at the time of this</p>
Page 22	Page 24
<p>1 those interrogatories related to this case,</p> <p>2 correct?</p> <p>3 A Yes.</p> <p>4 Q Okay. So I want to follow up on some</p> <p>5 of the answers you provided. So one of the</p> <p>6 interrogatories we asked was for you to</p> <p>7 identify people you've spoken to about the</p> <p>8 incident, and when I say "incident," you</p> <p>9 understand what I'm talking about, right?</p> <p>10 A Yes.</p> <p>11 Q Okay. The incident that happened at</p> <p>12 The Corner Alley, January 13th, 2018, right?</p> <p>13 A Right.</p> <p>14 Q Involving you and Thomas Yatsko, right?</p> <p>15 A Yeah.</p> <p>16 Q I just want to make sure we're on the</p> <p>17 same page. You told me in your discovery</p> <p>18 answer that you've spoken with CPD Internal</p> <p>19 Affairs investigators, so that's the</p> <p>20 Cleveland Police Internal Affairs</p> <p>21 investigators?</p> <p>22 A Yes.</p> <p>23 Q All right. Can you recall the names of</p> <p>24 the investigators that you spoke to?</p> <p>25 A It's Lieutenant Rob Tucker.</p>	<p>1 interview?</p> <p>2 A No, I don't believe so.</p> <p>3 Q Did you have an attorney present with</p> <p>4 you?</p> <p>5 A I did.</p> <p>6 Q Who was the attorney?</p> <p>7 A Bob Phillips.</p> <p>8 Q Okay. Have you ever reviewed the video</p> <p>9 or audio of your interview?</p> <p>10 A I have not.</p> <p>11 Q How long did this interview last?</p> <p>12 A I don't recall.</p> <p>13 Q I'm going to press you a little bit on</p> <p>14 that. Do you think it was longer than an</p> <p>15 hour?</p> <p>16 A Yes, I believe so.</p> <p>17 Q Do you think it was longer than three</p> <p>18 hours?</p> <p>19 A I don't know.</p> <p>20 Q Okay. But certainly longer than an</p> <p>21 hour?</p> <p>22 A I believe so, yes.</p> <p>23 Q So presumably they asked you a number</p> <p>24 of specific questions about the incident; is</p> <p>25 that fair?</p>

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<p>1 A Yes.</p> <p>2 Q Did you prepare a written statement</p> <p>3 before this interview?</p> <p>4 A I did not.</p> <p>5 Q Have you ever prepared a written</p> <p>6 statement about the incident?</p> <p>7 A No.</p> <p>8 Q So other than yourself, Bob Phillips,</p> <p>9 these three investigators, who else was</p> <p>10 present during the interview?</p> <p>11 A The FOP president, Brian Bentley,</p> <p>12 Captain Brian Bentley, and the FOP first</p> <p>13 vice president, Lieutenant Jerry Zarlenga.</p> <p>14 Q Anyone else?</p> <p>15 A No, I don't believe so.</p> <p>16 Q Have you had a conversation with anyone</p> <p>17 about your interview after it happened?</p> <p>18 A No.</p> <p>19 Q Did you sit for any other interview</p> <p>20 with anyone in any setting related to the</p> <p>21 incident other than that one that you just</p> <p>22 told me?</p> <p>23 A No.</p> <p>24 Q Okay. Some other individuals you</p> <p>25 identified in your interrogatory responses</p>	<p>1 Q And the other person you identified is</p> <p>2 the City of Cleveland stress consultant, Dr.</p> <p>3 Franklin. Is this somebody you are seeing</p> <p>4 related to this incident?</p> <p>5 A Initially I saw her. I see someone</p> <p>6 else now.</p> <p>7 Q And what was the purpose of seeing Dr.</p> <p>8 Franklin?</p> <p>9 A Deal with the aftermaths of the</p> <p>10 incident.</p> <p>11 Q Can you recall how many different times</p> <p>12 you met with Dr. Franklin?</p> <p>13 A Couldn't give you a number, but it's</p> <p>14 numerous times.</p> <p>15 Q When did you stop seeing Dr. Franklin?</p> <p>16 A When I started seeing an outside --</p> <p>17 outside doctor.</p> <p>18 Q Can you give me a time frame?</p> <p>19 A I'm sorry, I cannot.</p> <p>20 Q It was sometime last year that you</p> <p>21 switched from Dr. Franklin to an outside</p> <p>22 provider?</p> <p>23 A Yes.</p> <p>24 Q Do you think it was in the springtime,</p> <p>25 in the summertime?</p>
Page 26	Page 28
<p>1 that you spoke with about the incident</p> <p>2 includes your FOP attorney, Bob Phillips,</p> <p>3 FOP president, Captain Brian Bentley. Did</p> <p>4 you speak with Mr. Bentley outside of the</p> <p>5 setting of that interview you just told me</p> <p>6 about?</p> <p>7 A No.</p> <p>8 Q That was the one and only circumstance</p> <p>9 in which you had a conversation with him at</p> <p>10 that point?</p> <p>11 A Yes.</p> <p>12 Q Did you talk with him before the</p> <p>13 interview happened?</p> <p>14 A No.</p> <p>15 Q Did you talk with him after?</p> <p>16 A No.</p> <p>17 Q What about FOP first vice president,</p> <p>18 Lieutenant Gerald Zarlenga, he was also</p> <p>19 present at the interview?</p> <p>20 A He was.</p> <p>21 Q Did you talk with him before the</p> <p>22 interview?</p> <p>23 A No.</p> <p>24 Q After?</p> <p>25 A No.</p>	<p>1 A If I could give you a specific time, I</p> <p>2 would give it to you. I don't know it.</p> <p>3 Q Okay. Who is the outside provider that</p> <p>4 you now see?</p> <p>5 A Dr. Eddie Myers.</p> <p>6 Q And where does he practice?</p> <p>7 A He has an office over on Rocky River</p> <p>8 Drive.</p> <p>9 Q And is that where you see him?</p> <p>10 A Yes.</p> <p>11 Q Are you still seeing him?</p> <p>12 A Yes.</p> <p>13 Q How often?</p> <p>14 A It varies.</p> <p>15 Q From what to what?</p> <p>16 A Usually once every week or once every</p> <p>17 couple of weeks to more than one time, you</p> <p>18 know, in those time frames.</p> <p>19 Q So as frequently as once a week?</p> <p>20 A Yeah.</p> <p>21 Q Have you been given a diagnosis, mental</p> <p>22 health diagnosis, related to this incident?</p> <p>23 A He has not given me a specific</p> <p>24 diagnosis.</p> <p>25 Q Has any mental health provider given</p>

Page 29	Page 31
<p>1 you any specific diagnosis?</p> <p>2 A No.</p> <p>3 Q Are you obligated to see a stress</p> <p>4 consultant or is this something you've</p> <p>5 chosen to do on your own?</p> <p>6 A I've chosen to do it on my own.</p> <p>7 Q From the beginning, it was your choice</p> <p>8 or was it at the beginning something you --</p> <p>9 A No, it's always been my choice.</p> <p>10 Q Before the incident, had you ever seen</p> <p>11 any kind of mental health provider for</p> <p>12 anything?</p> <p>13 A No.</p> <p>14 Q Other than the individuals we talked</p> <p>15 about, have you spoken with anyone else at</p> <p>16 the Cleveland Police Department about the</p> <p>17 incident?</p> <p>18 A No, I have not.</p> <p>19 Q Were you interviewed by anybody at the</p> <p>20 scene of the incident?</p> <p>21 A I was not.</p> <p>22 Q Were you interviewed by anybody at the</p> <p>23 hospital where you went from the scene?</p> <p>24 A No.</p> <p>25 Q Am I correct in understanding that from</p>	<p>1 A No, I was not.</p> <p>2 Q They were just trying to I guess</p> <p>3 provide some support for you; is that fair?</p> <p>4 A I can't speak for them, but...</p> <p>5 Q That was your impression?</p> <p>6 A Yes.</p> <p>7 Q Did you know these officers?</p> <p>8 A In passing.</p> <p>9 Q But you can't recall who they were as</p> <p>10 we sit here?</p> <p>11 A I cannot, no.</p> <p>12 Q All right. You told me in response to</p> <p>13 another interrogatory your e-mail address,</p> <p>14 which is dgraziolli@gmail.com?</p> <p>15 A Yes.</p> <p>16 Q Have you sent or received any e-mails</p> <p>17 related in any way to this incident?</p> <p>18 A From my attorney, yes.</p> <p>19 Q Other than from or to your attorney?</p> <p>20 A No.</p> <p>21 Q Did you do anything to look in your</p> <p>22 e-mail inbox or outbox to see whether you</p> <p>23 have any e-mails related to the incident?</p> <p>24 A I don't really understand.</p> <p>25 Q Yeah. You just told me that the only</p>
Page 30	Page 32
<p>1 the scene, you went to the University</p> <p>2 Hospitals?</p> <p>3 A Yes.</p> <p>4 Q Did you go anywhere in between?</p> <p>5 A No.</p> <p>6 Q And how did you get to the hospital?</p> <p>7 A EMS transported me.</p> <p>8 Q Were you accompanied by any officer?</p> <p>9 A I was.</p> <p>10 Q How many?</p> <p>11 A I think two.</p> <p>12 Q Do you recall their names?</p> <p>13 A I do not recall their names, no.</p> <p>14 Q Did they stay with you at the hospital?</p> <p>15 A Yes.</p> <p>16 Q What was your understanding of the</p> <p>17 purpose of them staying with you at the</p> <p>18 hospital?</p> <p>19 A Something a policeman would do for</p> <p>20 another policeman.</p> <p>21 Q So you weren't under the impression</p> <p>22 that you were a suspect in any crime?</p> <p>23 A Absolutely not, no.</p> <p>24 Q You weren't in their custody, so to</p> <p>25 speak?</p>	<p>1 e-mails you believe you have related to this</p> <p>2 incident are either to or from your</p> <p>3 attorney.</p> <p>4 A Okay.</p> <p>5 Q My question is what did you do, what</p> <p>6 steps did you take to verify that you don't</p> <p>7 have any other e-mails related to this</p> <p>8 incident?</p> <p>9 A I didn't take any other steps.</p> <p>10 Q Okay. You know within gmail, you can</p> <p>11 perform a search, right?</p> <p>12 A The e-mails on the phone, it's not</p> <p>13 something I'm, you know, a hundred percent</p> <p>14 versed on.</p> <p>15 Q Okay. Well, something I need to know</p> <p>16 is if you have any documents, any e-mails,</p> <p>17 not between you and your attorney, but that</p> <p>18 are related to this incident, okay? That's</p> <p>19 something I need to know, okay?</p> <p>20 A Okay.</p> <p>21 Q So I'll follow up with your attorney</p> <p>22 and you and he can undertake efforts to</p> <p>23 check your e-mail to make sure that you</p> <p>24 don't have any documents, okay?</p> <p>25 A Okay.</p>

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1 **Q All right. At the time of this**
 2 **incident, you had one cell phone on you; is**
 3 **that right?**
 4 **A Yes.**
 5 **Q It was your personal cell phone?**
 6 **A Yes.**
 7 **Q And that was the cell phone ending in**
 8 **7901?**
 9 **A Correct.**
 10 **Q And your provider was Sprint?**
 11 **A Yes.**
 12 **Q And that a Samsung 8S phone?**
 13 **A Yes.**
 14 **Q Do you still have that phone?**
 15 **A Yes.**
 16 **Q Okay. Did you send or receive any text**
 17 **messages on January 13th, 2018?**
 18 **A In general?**
 19 **Q In general, yes.**
 20 **A I don't recall if I did or not.**
 21 **Q Have you done anything to see if you've**
 22 **sent or received text messages on that day?**
 23 **A No, I have not.**
 24 **Q So as you sit here today, you don't**
 25 **know if you sent or received any text**

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1 **messages on that day related to this**
 2 **incident, correct?**
 3 **A Correct.**
 4 **Q What about the following day, January**
 5 **14, 2018, any text messages about the**
 6 **incident?**
 7 **A No.**
 8 **Q Okay. So that's another thing I'm**
 9 **going to need you and your attorney to do is**
 10 **to look at your text messages from the 13th**
 11 **and the 14th and see if you have any text**
 12 **messages related to this incident, okay?**
 13 **A Okay.**
 14 **Q And if you do, produce them, okay.**
 15 **A (Nodding).**
 16 **Q All right, sir, are you good to keep**
 17 **going?**
 18 **A I'm fine.**
 19 **Q Okay. If you want to take a break at**
 20 **any point, you tell me so, okay?**
 21 **A Yes.**
 22 **Q So you understand that The Corner Alley**
 23 **is one of the named defendants in this case?**
 24 **A Yes.**
 25 **Q Okay. And one of the reasons that**

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1 **they're named in this case is depending on**
 2 **what the court rules and what the jury**
 3 **finds, there may be circumstances under**
 4 **which The Corner Alley might be legally**
 5 **responsible if there's a judgment entered**
 6 **against you, okay?**
 7 **A Okay.**
 8 **Q All right. So is it fair to say that**
 9 **on January 13th, 2018, you were working for**
 10 **The Corner Alley?**
 11 **A Yes.**
 12 **Q Okay. What was your job title?**
 13 **A I guess security.**
 14 **Q You say you guess security. Why do you**
 15 **have doubts or uncertainty about what your**
 16 **job title was?**
 17 **A As a policeman, you're viewed as**
 18 **security. As a policeman, I'm viewed as a**
 19 **policeman to myself, but to others, we are**
 20 **viewed as security.**
 21 **Q Did Corner Alley tell you that your job**
 22 **title is security?**
 23 **A No, they did not.**
 24 **Q Did you ever have a conversation with**
 25 **Corner Alley about what exactly your job**

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1 **title was?**
 2 **A No.**
 3 **Q You just had some general sense that it**
 4 **was to provide security at The Corner Alley?**
 5 **A Yes.**
 6 **Q And when you interacted with Thomas**
 7 **Yatsko in front of The Corner Alley, you**
 8 **were still on the job, correct?**
 9 **MR. ROCHE: Objection.**
 10 **Go ahead.**
 11 **A Could you be more specific?**
 12 **Q Yeah. You were still working security**
 13 **for Corner Alley at that time?**
 14 **A Yes.**
 15 **Q I mean, you didn't notify anybody at**
 16 **Corner Alley that you were going to be off**
 17 **the clock in terms of providing security for**
 18 **Corner Alley at the time that you interacted**
 19 **with Thomas Yatsko, correct?**
 20 **A I didn't interact with anyone about**
 21 **any topic at The Corner Alley.**
 22 **Q Yeah, no. I apologize if my question**
 23 **was not clear.**
 24 **When you interacted with Thomas Yatsko**
 25 **outside of Corner Alley, okay, did you tell**

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1 anybody at Corner Alley that, "I'm going to
2 be off the clock for a moment, I need to
3 interact with this young man"? Did you say
4 anything to that effect?

5 A I did not, no.

6 Q Okay. Now, The Corner Alley premises
7 includes the inside where there's the
8 bowling alley and the bar, correct?

9 A Yes.

10 Q And The Corner Alley included the patio
11 area in front, correct?

12 MR. ROCHE: Objection.

13 A Yes.

14 Q All right. And even though it was cold
15 outside on this particular date, you did see
16 that there were some customers using the
17 patio such as to smoke or to make a phone
18 call, correct?

19 A I don't recall anybody being outside.

20 Q Okay. Well, you certainly saw Thomas
21 Yatsko in front of the patio, right?

22 A Yes.

23 Q And you saw the blond woman, Breann
24 Steele? She was in the patio, you saw her?

25 A I did not see her.

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1 Q Okay.

2 A No.

3 Q All right. Your job was to provide
4 security both inside The Corner Alley and in
5 the outside vicinity, including the patio,
6 if necessary?

7 MR. ROCHE: Objection.

8 A I guess, yes.

9 Q Okay. And when you interacted with
10 Thomas Yatsko at the edge of The Corner
11 Alley patio, were you partly motivated to
12 keep Thomas Yatsko out of The Corner Alley
13 to make sure he doesn't go back inside?

14 A I don't understand the "partly
15 motivated" part of your question.

16 Q Right.

17 A I don't understand that.

18 Q Fair enough. And I appreciate you
19 telling me if you don't understand my
20 question.

21 Was one of your objectives in
22 interacting with Thomas Yatsko outside of
23 The Corner Alley is to make sure he didn't
24 go back inside The Corner Alley?

25 A Yes.

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1 Q And did you believe that that was part
2 of your job responsibilities as security for
3 The Corner Alley, to make sure Thomas didn't
4 go back inside the bar?

5 A Yes.

6 Q Is it fair to say, sir, that if you
7 weren't working security for the Corner
8 Alley, you likely would not have been at
9 that Corner Alley location that night?

10 A That's correct.

11 Q And, therefore, you likely would not
12 have interacted with Thomas Yatsko,
13 correct?

14 A That's correct.

15 Q And you likely would not have been
16 carrying your gun on these premises,
17 correct?

18 A If I wasn't there and if I didn't
19 interact with him, would I have a gun on me?
20 Is that the question?

21 Q Correct.

22 A If I was anywhere else other than
23 there?

24 Q Sure, yeah.

25 A Not necessarily, no.

1 Q Okay. All right. Even though you were
2 working for Corner Alley on January 13th,
3 2018, am I correct in understanding that the
4 Cleveland Police Department did have to
5 approve your secondary employment?

6 A Yes, that is correct.

7 Q All right. And what did you have to
8 do? What steps did you have to take in
9 order to get approval for this secondary
10 employment?

11 A There's a form -- a format, I should
12 say, you fill out on a computer. It has the
13 names, the places, you have to fill that
14 out. You have to submit a coverage letter
15 for, like, either your own Workers' Comp or
16 for Workers' Comp for the, you know,
17 specific place, and then you have to address
18 any sick time that you personally have used
19 and then it's forwarded through a chain of
20 command.

21 Q Up to the police chief?

22 A Not sure if it goes to the chief
23 anymore or if it goes to a designee of his.
24 I'm not sure.

25 Q Am I correct in understanding that the

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1 **police chief has to approve your secondary**
 2 **employment?**
 3 MR. PIKE: Objection.
 4 Form.
 5 A That's my understanding.
 6 **Q And the Director of Public Safety, does**
 7 **he also have to approve secondary employment**
 8 **for Cleveland police officers?**
 9 MR. PIKE: Objection.
 10 Form, foundation.
 11 A I'm not sure.
 12 **Q Was it your understanding that this**
 13 **permission to work secondary employment**
 14 **could be revoked at any time?**
 15 A Yes.
 16 **Q And did you have to get permission**
 17 **every year that you work secondary**
 18 **employment?**
 19 A Yes.
 20 **Q Did you have your permission to work**
 21 **secondary employment at The Corner Alley**
 22 **revoked at any point before January 13th,**
 23 **2018?**
 24 A No.
 25 **Q When Cleveland police officers are**

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1 **engaged in secondary employment, are they**
 2 **authorized to wear their police uniform?**
 3 A Yes.
 4 **Q Are you wearing your police uniform**
 5 **now?**
 6 A I am.
 7 **Q Is this the same uniform you wear when**
 8 **you're on duty?**
 9 A Yes.
 10 **Q And is it the same uniform you wear**
 11 **when you're working secondary employment?**
 12 A Yes.
 13 **Q Okay. And can you just describe for me**
 14 **all the different badges and the insignia**
 15 **you have on your shirt?**
 16 A Well, the badge would identify my rank,
 17 Cleveland Police Sergeant. Obviously the
 18 patches say "Cleveland Police" on them. The
 19 sergeant's patch, the three stripes, is, you
 20 know, synonymous with a sergeant's rank, and
 21 these would be for every five years of
 22 service.
 23 **Q So we know from those patches you've**
 24 **been on the force at least 25 years?**
 25 A Correct.

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1 **Q Anything else on your shirt that is**
 2 **relevant?**
 3 A No.
 4 **Q Okay. Is this what you were wearing**
 5 **on January 13th, 2018 when you were working**
 6 **secondary employment for The Corner Alley?**
 7 A Yes.
 8 **Q Are Cleveland police officers required**
 9 **to carry their Cleveland Police Department**
 10 **issued firearms when they're working**
 11 **secondary employment?**
 12 A Yes.
 13 **Q And were you doing so on the date of**
 14 **the incident?**
 15 A Yes.
 16 **Q What type of weapon is it?**
 17 A It's a Glock model 17.
 18 **Q What about the magazines for that gun,**
 19 **are those also issued by the police**
 20 **department?**
 21 A Yes.
 22 **Q And the bullets inside those magazines?**
 23 A Yes.
 24 **Q What else are Cleveland police officers**
 25 **required to carry on them while working**

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1 **secondary employment?**
 2 A A Taser, pepper spray, ASP baton.
 3 That's pretty much it.
 4 **Q What about handcuffs?**
 5 A Oh, handcuffs, yeah. I'm sorry.
 6 Handcuffs.
 7 **Q Did you have those items on you while**
 8 **you were working secondary employment for**
 9 **The Corner Alley on January 13, 2018?**
 10 A I did not.
 11 **Q Why not?**
 12 A I worked it before and never as so much
 13 had an alter -- a verbal altercation with
 14 anybody, so I was lax by not carrying those
 15 things, lax in my mind.
 16 **Q Are you telling me that you have only**
 17 **ever had a verbal altercation while working**
 18 **secondary employment at The Corner Alley or**
 19 **in your entire career working secondary**
 20 **employment?**
 21 A Working there specific, there was no
 22 problems whatsoever.
 23 **Q Where were these items? Were they at**
 24 **home, in your car, at the district?**
 25 A I don't recall where they were.

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1 **Q When did you start working for The**
 2 **Corner Alley?**
 3 A I think it would have been September of
 4 the previous year.
 5 **Q 2017?**
 6 A I believe so.
 7 **Q While working secondary employment, are**
 8 **you still required to fulfill certain**
 9 **official responsibilities as a police**
 10 **officer as the circumstances may require?**
 11 MR. PIKE: Objection.
 12 Form.
 13 A I guess I don't really understand. If
 14 you could be more specific. I don't really
 15 understand.
 16 **Q Sure. Do you still have an obligation**
 17 **to preserve the peace if you observe, say,**
 18 **criminal activity while working secondary**
 19 **employment?**
 20 A Yes.
 21 **Q If you observe a crime being committed**
 22 **while working secondary employment, do you**
 23 **still have an official responsibility to**
 24 **address that crime?**
 25 A Yes.

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1 **Q And to, if necessary, arrest the person**
 2 **committing the crime?**
 3 A Yes.
 4 **Q So this is true regardless of whether**
 5 **you're technically on duty or off duty, you**
 6 **still have those official responsibilities?**
 7 MR. PIKE: Objection.
 8 Form.
 9 A I'm not specifically sure about the
 10 "off duty" portion of your question.
 11 **Q Sure. Well, we don't have to use the**
 12 **phrase "off duty," but regardless of whether**
 13 **you're on duty as a police officer or you're**
 14 **working secondary employment, you still have**
 15 **to fulfill those official responsibilities**
 16 **we just talked about?**
 17 MR. PIKE: Objection.
 18 Form.
 19 BY MR. TOR:
 20 **Q Is that fair?**
 21 A The ones that you spoke about and I
 22 answered, yes.
 23 **Q Are there any other official**
 24 **responsibilities you have to fulfill as a**
 25 **Cleveland police officer even when you're**

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1 **working secondary employment?**
 2 A I would say I don't know because it
 3 would be specific to whatever I am faced
 4 with or observe.
 5 **Q There might be other responsibilities,**
 6 **you just can't call any specific ones to**
 7 **mind; is that fair?**
 8 A That's fair.
 9 **Q Did the Cleveland Police Department**
 10 **ever provide you training regarding**
 11 **secondary employment?**
 12 A No.
 13 **Q Did the Cleveland Police Department**
 14 **ever provide you training on the rules and**
 15 **regulations you must comply with while**
 16 **working secondary employment?**
 17 A Yes.
 18 **Q Okay. And do you recall when you**
 19 **received that training?**
 20 A Not specifically, no.
 21 **Q Did you receive that training once or**
 22 **multiple times on a regular basis? Give me**
 23 **an idea.**
 24 A It's hard -- it's a hard question to
 25 answer.

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1 **Q Okay. That's fair. What format was**
 2 **this training?**
 3 So let me ask it this way: The
 4 training on the rules and regulations that
 5 govern your work while on secondary
 6 employment, did you get this training in a
 7 classroom setting, did you get it in some
 8 kind of live interactive format? Do you
 9 recall the setting or the format?
 10 A I do not.
 11 **Q You are aware that there are specific**
 12 **Cleveland Police policies related to**
 13 **secondary employment?**
 14 A I am.
 15 **Q Okay. And you're familiar with those**
 16 **policies?**
 17 A I am.
 18 **Q And you were responsible for following**
 19 **those policies while on secondary**
 20 **employment, correct?**
 21 A Yes.
 22 **Q In addition, while working secondary**
 23 **employment, you are required to follow the**
 24 **Cleveland Police use of force policies,**
 25 **correct?**

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1 A Correct.

2 **Q All right. We talked about some of the**

3 **attire you had on at the time of the**

4 **incident, but I want to make sure we cover**

5 **all the different Cleveland issued equipment**

6 **and attire you had on at the time.**

7 **So the pants you wore that night, were**

8 **those Cleveland Police Department issued**

9 **uniform pants?**

10 A Yes.

11 **Q What about your shirt? You were**

12 **wearing a long sleeve shirt I understand?**

13 A Yes.

14 **Q Underneath your outer shirt here; is**

15 **that right, or is that what you mean by long**

16 **sleeve?**

17 A Long sleeve uniform shirt.

18 **Q Got it. Were you wearing anything else**

19 **that the Cleveland Police Department had**

20 **issued to you other than your pants, your**

21 **shirt, the badges?**

22 A I had an outer coat on.

23 **Q That was a Cleveland Police issued**

24 **coat?**

25 A Yes.

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1 **Q Did it say "police" or give any -- have**

2 **any police markings on it?**

3 A It's exactly like this shirt, except

4 it's a jacket, a heavy jacket. I believe

5 it's called a cruiser jacket.

6 **Q Was it your understanding you had**

7 **permission from the Cleveland Police**

8 **Department to wear all of this attire while**

9 **working at The Corner Alley?**

10 A Yes.

11 MR. PIKE: Objection.

12 Form.

13 BY MR. TOR:

14 **Q You mentioned a Taser. Are you**

15 **qualified to carry and use a Taser as a**

16 **Cleveland police officer?**

17 A Yes.

18 **Q And I take it you're qualified and**

19 **trained to use pepper spray?**

20 A It's been so long ago that we were

21 certified to carry that, I don't know if a

22 certification is an ongoing thing or if it's

23 time-specific. I don't know the answer to

24 that.

25 **Q Let me ask it this way: Would you feel**

Page 51

1 **comfortable using pepper spray? In other**

2 **words, do you know how to use pepper spray**

3 **as a police officer?**

4 A I would say yes.

5 **Q When you're on duty, do you have pepper**

6 **spray on your duty belt?**

7 A No, I do not.

8 **Q Okay. When you're on duty, do you have**

9 **a Taser on your belt?**

10 A It's not on the belt.

11 **Q Where is it?**

12 A It's carried -- I would carry mine in a

13 pocket.

14 **Q But it would be on your person?**

15 A It would be, yes.

16 **Q What about the baton, do you carry that**

17 **when you're on duty?**

18 A I do not, no.

19 **Q Do you know how to use the baton?**

20 A Yes.

21 **Q Are all those items, the pepper spray,**

22 **the baton, the Taser, are those all**

23 **Cleveland Police issued?**

24 A Yes.

25 **Q So let me kind of circle back to an**

Page 52

1 **earlier question. While you're on duty,**

2 **tell me all the weapons that you do carry**

3 **with you. Obviously your gun, right?**

4 A It would be the ones that I mentioned.

5 **Q The gun, the Taser?**

6 A Taser.

7 **Q What else?**

8 A The ASP baton and the pepper spray and

9 the handcuffs.

10 **Q Okay. So you do carry that when you're**

11 **on duty?**

12 A I carry it with me, yes.

13 **Q And again, you're comfortable using all**

14 **those different weapons?**

15 A Yes.

16 **Q Have you ever used a Taser on an**

17 **individual?**

18 A I have not.

19 **Q What about when you were trained on**

20 **using the Taser, did you ever deploy it on**

21 **any individual?**

22 A No.

23 **Q Okay. Have you ever used a baton on**

24 **any individual?**

25 A Not that I can recall, no.

Page 53

1 **Q Pepper spray?**
 2 A Pepper spray, yes.
 3 **Q How often have you used pepper spray as**
 4 **a police officer?**
 5 A I would say only a few times.
 6 **Q You told me earlier that on the night**
 7 **of the incident, you were only carrying a**
 8 **gun, you weren't carrying any of your**
 9 **intermediate weapons, right?**
 10 A That's correct.
 11 **Q And you told me that the reason you**
 12 **didn't carry these intermediate weapons is**
 13 **because you got a little bit lax because you**
 14 **didn't have any issues at The Corner Alley;**
 15 **is that correct?**
 16 A That's correct.
 17 **Q Why then did you feel the need to carry**
 18 **a gun?**
 19 A I've always carried a gun no matter
 20 what the job.
 21 **Q Did you think you'd ever have to use**
 22 **the gun?**
 23 A No, absolutely not.
 24 **Q So you carried the gun as a matter of**
 25 **habit; fair to say?**

Page 54

1 A It's not -- it's not because of habit.
 2 It's like you wearing a suit, putting a tie
 3 on.
 4 **Q Part of your uniform?**
 5 A Right.
 6 **Q Part of declaring to the public, "I'm a**
 7 **Cleveland police officer"?**
 8 A Yeah, I guess, yeah. I think the
 9 uniform says that more, but...
 10 **Q Okay. Part of your job as a police**
 11 **officer involved dealing with citizens who**
 12 **might be noncompliant; is that true?**
 13 A That's true.
 14 **Q Who might be drunk or unruly, true?**
 15 A Mm-hmm, yes.
 16 **Q Who might be disobedient or**
 17 **noncompliant, correct?**
 18 A Yes.
 19 **Q And I take it in your 27-year career,**
 20 **is it 27 years?**
 21 A Yes.
 22 **Q I take it in those 27 years, you've**
 23 **dealt with such individuals; is that fair?**
 24 A That's fair.
 25 **Q Okay. And you're expected to deal with**

Page 55

1 **these individuals in a professional and**
 2 **reasonable manner, right?**
 3 A Yes.
 4 **Q And you are expected and presumably**
 5 **trained on conflict management; is that**
 6 **fair?**
 7 A I don't know if we've been trained with
 8 that specific title.
 9 **Q Have you been trained on de-escalation**
 10 **techniques?**
 11 A Yes.
 12 **Q How often do you receive training on**
 13 **de-escalation?**
 14 A That's relatively new to the
 15 department.
 16 **Q How new is it?**
 17 A I would say within the last -- last
 18 year or so. I couldn't give you a date
 19 specific.
 20 **Q It appears from your personnel file**
 21 **that you received de-escalation training in**
 22 **the fall of 2017; is that correct?**
 23 A Okay. I mean, I don't recall the
 24 specific training.
 25 **Q Let me ask the question this way: At**

Page 56

1 **some point prior to the incident, you had**
 2 **received de-escalation training; is that**
 3 **fair?**
 4 A If it's in the personnel file, then we
 5 probably received it.
 6 **Q As you sit here today, can you recall**
 7 **that training?**
 8 A I cannot, no.
 9 **Q So you don't know whether it was quick**
 10 **training or long training, correct?**
 11 A I don't know.
 12 **Q You don't know whether it took 30**
 13 **minutes or several days, correct?**
 14 A I do not know.
 15 **Q And you can't recall any of the**
 16 **specifics of what you were taught during**
 17 **this training; is that fair?**
 18 A That's fair.
 19 **Q Can you recall the instructor?**
 20 A No.
 21 **Q Were you given any written material**
 22 **during this training?**
 23 A Again, I don't know.
 24 **Q Well, we've talked about**
 25 **de-escalation. What does that term mean to**

Page 57

Page 59

1 **you as a police officer?**

2 A It's got so many -- so many different,
3 I think, steps to it and they are, I feel,
4 specific to whatever you are dealing with.

5 So to answer it in the way you're
6 asking me, I couldn't give you a specific
7 answer.

8 **Q Sure. I'll ask specific questions**
9 **then, okay?**

10 A That's fine.

11 **Q All right. One of the objectives in**
12 **using de-escalation techniques is to reduce**
13 **or eliminate the need to resort to force,**
14 **correct?**

15 A Okay.

16 **Q Were you ever trained about that by the**
17 **Cleveland Police Department?**

18 A Again, I don't recall the specifics of
19 the training.

20 **Q Were you trained by the police**
21 **department that de-escalation techniques are**
22 **important in order to slow down a situation?**

23 A See, the thing I'm having a hard time
24 with is it's hard to answer your question
25 because of, again, I refer back to something

Page 58

1 specific happening and a response to it. I
2 don't understand how to -- I don't know how
3 to answer that to you.

4 **Q Okay. Were you trained by the**
5 **Cleveland Police Department that police**
6 **officers must take all reasonable steps to**
7 **de-escalate an incident and reduce the**
8 **likelihood of having to use force?**

9 MR. PIKE: Objection.

10 Form, foundation.

11 A I would say if we are given an
12 opportunity to do that, yes.

13 **Q Okay. Is it your responsibility as a**
14 **police officer to be proactive in reducing**
15 **the severity of an encounter with a citizen**
16 **so as to reduce the need to resort to force?**

17 A If I was given an opportunity to reduce
18 that, then I would, yes.

19 **Q Okay. Were you trained that an officer**
20 **should avoid using aggressive body language**
21 **towards a citizen?**

22 A I don't recall that.

23 **Q Were you ever trained that an officer**
24 **should avoid getting unnecessarily close to**
25 **a suspect?**

1 A It's more of a personal thing about
2 getting close to somebody than being trained
3 that way.

4 **Q What do you mean?**

5 A Like I wouldn't -- me, personally, I
6 wouldn't get close to somebody. It's just,
7 I guess -- it's just the way that I'm made
8 up. It's not necessarily I've been trained
9 that way.

10 **Q You're just not comfortable getting**
11 **close to another person; is that what you're**
12 **saying?**

13 A Right.

14 **Q Okay. Well, were you trained by the**
15 **Cleveland Police Department that as an**
16 **officer, you should avoid using a harsh**
17 **level of voice or tone while interacting**
18 **with an individual?**

19 MR. PIKE: Objection.

20 Form, foundation.

21 A I don't recall being specifically
22 trained not to do that or to do it.

23 **Q Were you ever trained by the Cleveland**
24 **Police Department to avoid using swear or**
25 **curse words towards an individual?**

Page 60

1 A Again, I don't recall being trained or
2 not trained.

3 **Q Were you trained that as an officer,**
4 **you should take steps to calm and cool down**
5 **a situation when interacting with an**
6 **individual?**

7 A If I'm given the opportunity to, yes.

8 **Q Okay. But my specific question is**
9 **whether you were trained by the police**
10 **department to do that.**

11 A Again, I don't recall, you know,
12 specific black and white in front of me.

13 **Q Okay.**

14 A I don't recall that.

15 **Q Were you trained by the police**
16 **department that you should as an officer**
17 **minimize the level of force that you have to**
18 **use against a suspect?**

19 A Yes.

20 **Q Okay. I'm going to go through some**
21 **de-escalation techniques. I want you to**
22 **tell me if you've ever been trained by the**
23 **police department on how to use them, okay?**

24 A Okay.

25 **Q Verbal persuasion?**

Page 61

1 A I don't recall.

2 **Q Advisements, giving advisements or**

3 **warnings to a suspect?**

4 A Yes. Okay, yes.

5 **Q When were you trained on that?**

6 A I would say through the course of my

7 career.

8 **Q Were you trained on slowing down the**

9 **pace of an incident as one of the possible**

10 **de-escalation techniques?**

11 A I don't recall.

12 **Q Proactively creating a distance between**

13 **yourself and the suspect?**

14 A I would say yes to that. Yes.

15 **Q Placing barriers between yourself and**

16 **the suspect or the subject?**

17 **VIDEOGRAPHER: Three**

18 **minutes of tape.**

19 A Specifically, I don't recall that.

20 **Q Moving yourself to a safer place or**

21 **safer position?**

22 A Yeah. Yes, I would say so, yes.

23 **Q Taking steps to avoid having a physical**

24 **confrontation with the individual?**

25 A I don't recall that one specifically.

Page 62

1 **Q Were you trained to talk to individuals**

2 **in a calm manner, in a normal tone of voice?**

3 A Not that I can recall.

4 **Q Were you trained that when trying to**

5 **de-escalate a situation, an officer should**

6 **ask questions rather than issue orders or**

7 **commands?**

8 A Not that I can recall.

9 **VIDEOGRAPHER: We're off the**

10 **record.**

11 **---**

12 **(Short recess to change tapes.)**

13 **---**

14 **VIDEOGRAPHER: We're back on**

15 **the record. Tape two.**

16 **BY MR. TOR:**

17 **Q Okay. Let's talk about the use of**

18 **force, okay?**

19 A Okay.

20 **Q Have you received training by the**

21 **police department on use of force?**

22 A Yes.

23 **Q How often do you undergo use of force**

24 **training?**

25 A I'd say once a year.

Page 63

1 **Q What is the format of this training?**

2 A It's given down at the outdoor range

3 before you would qualify with your weapon,

4 which you do on a yearly basis.

5 **Q A shooting range?**

6 A Correct.

7 **Q Okay. Other than practicing using your**

8 **gun at the shooting range, what training do**

9 **you receive on a yearly basis regarding the**

10 **use of force?**

11 A They give you a test, multiple choice

12 answer test related to the general police

13 order.

14 **Q Do they give you any kind of refresher**

15 **course or they just give you the multiple**

16 **choice exam and see how you do?**

17 A They go over the general police order

18 before the testing procedure.

19 **Q How much time do they spend going over**

20 **the police order?**

21 A I would say it varies. It varies

22 because some years we're down at the range

23 for more than one day, other times we're

24 there for one day and that's that.

25 **Q Is this in a classroom setting where**

Page 64

1 **they go over the police orders?**

2 A Yes.

3 **Q Are you given any written material**

4 **during this course?**

5 A It's available to you if you want to

6 look at it.

7 **Q Do you consider yourself knowledgeable**

8 **about the use of force policies that the**

9 **Cleveland Police Department has issued?**

10 A Yes.

11 **Q If a patrol officer had a question**

12 **about the use of force policies, would you**

13 **feel that you would be comfortable answering**

14 **those questions?**

15 A Depends on the question.

16 **Q Okay. Were you trained by the police**

17 **department that officers must identify**

18 **themselves as police officers when**

19 **interacting with the public?**

20 A Yes.

21 **Q And must advise individuals of their**

22 **intent to detain or arrest them before using**

23 **any force?**

24 A I would have to say no to that.

25 **Q Were you trained that force may only be**

Page 65

1 **used by you as a police officer in order to**
 2 **achieve a lawful objective?**
 3 A Yes.
 4 **Q Such as to effect a lawful arrest, to**
 5 **make a lawful arrest, correct?**
 6 A That's one of the things, yes.
 7 **Q Another might be to gain control of a**
 8 **noncompliant individual?**
 9 A Yes.
 10 **Q To prevent or terminate the commission**
 11 **of a crime?**
 12 A Yes.
 13 **Q And you have been trained, I presume,**
 14 **on types of force that an officer can use**
 15 **that is less than deadly force?**
 16 A Yes.
 17 **Q Okay. What are some examples?**
 18 A The use of the Taser or the pepper
 19 spray or the ASP baton.
 20 **Q Any others you can think of off the top**
 21 **of your head?**
 22 A I guess, you know, like, you know,
 23 hand-to-hand stuff. Hands-on I should say.
 24 Hands-on.
 25 **Q Have you received hands-on training of**

Page 66

1 **the sort you're describing?**
 2 A Yes.
 3 **Q What about leg sweeps, is that a**
 4 **technique you could use short of using**
 5 **deadly force?**
 6 A If you have the opportunity, yes.
 7 **Q Or a take-down technique like tackling**
 8 **--**
 9 A Again, if the opportunity promotes
 10 itself, yes.
 11 **Q Using pressure point control?**
 12 A Yes.
 13 **Q Issuing verbal commands?**
 14 A Yeah, yeah.
 15 **Q Have you used any of these techniques**
 16 **in your 27-year career?**
 17 A I would say, yes; yes, I have.
 18 **Q And I think you told me you've been**
 19 **trained on these various techniques, right?**
 20 A Yes.
 21 **Q So you as a sergeant feel comfortable**
 22 **deploying these techniques?**
 23 A The reason why I hesitate is when I
 24 was younger, in better shape, I would agree
 25 that I could -- I would say yes, that I

Page 67

1 would feel comfortable deploying these
 2 things.
 3 **Q But now you don't feel as comfortable?**
 4 A If I was given the opportunity to use a
 5 technique like that, I would probably still
 6 do it. I just don't know the outcome.
 7 **Q Well, what is it that you do to stay in**
 8 **shape now?**
 9 A I go to the gym.
 10 **Q How often do you do that?**
 11 A I try three -- between three and five
 12 times a week.
 13 **Q And what do you do? Do you just lift**
 14 **weights or do you do any aerobic activities?**
 15 A It's aerobic, cardio stuff.
 16 **Q What specifically do you do?**
 17 A I walk on a treadmill, elliptical. I
 18 try to lift some weights, but the age is
 19 hitting me.
 20 **Q How much time do you spend in the gym?**
 21 A It varies, you know, from like an hour
 22 to maybe two hours.
 23 **Q Do you have a workout buddy or someone**
 24 **you work out with?**
 25 A No.

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1 **Q Which gym do you use?**
 2 A LifeWorks.
 3 **Q Where's that located?**
 4 A Middleburg Heights.
 5 **Q What time of day typically do you go to**
 6 **the gym?**
 7 A I would say, you know, in the
 8 afternoon.
 9 **Q All right. Let's return to the topic**
 10 **of use of force, okay?**
 11 A Okay.
 12 **Q Have you been trained that an officer**
 13 **has to consider his surroundings before he**
 14 **unholsters his gun?**
 15 A I don't remember anything specific
 16 about surroundings.
 17 **Q Okay. Have you been trained that you**
 18 **as an officer have to consider your**
 19 **surroundings before discharging your**
 20 **firearm?**
 21 A Yeah, yes. Yes. Yes, yes.
 22 **Q Okay. And what were you told or**
 23 **trained about that?**
 24 A I don't recall specifics about it.
 25 **Q How many times in your 27 years have**

Page 69

1 **you discharged your firearm aside from at**
 2 **the shooting range?**
 3 A Once.
 4 **Q During this incident that occurred at**
 5 **The Corner Alley?**
 6 A That's correct.
 7 **Q Were you trained that deadly force may**
 8 **only be used when necessary?**
 9 A Yes.
 10 **Q Were you trained that deadly force may**
 11 **be used only if the subject poses an**
 12 **imminent threat of serious physical harm to**
 13 **you or another person?**
 14 A Yes.
 15 **Q Were you trained that deadly force is**
 16 **not permitted unless there are no other**
 17 **force options, techniques, tactics or**
 18 **choices available to you?**
 19 A Could you be more specific? I don't --
 20 I don't understand because I think the
 21 question -- the question doesn't address the
 22 incident.
 23 **Q Sure. We're talking in general. If**
 24 **the circumstances permit other options, in**
 25 **terms of techniques, in terms of tactics, in**

Page 70

1 **terms of your choices as a police officer,**
 2 **is deadly force still permitted?**
 3 A The problem I'm having is that the
 4 question you're asking me is more of a broad
 5 -- broad thing instead of specific to the
 6 time that the deadly force is deployed.
 7 **Q Okay. Let me ask this question: Have**
 8 **you ever been trained about this general**
 9 **rule by the Cleveland Police Department?**
 10 A I don't -- I don't recall.
 11 **Q As you sit here, you don't recall any**
 12 **such training?**
 13 MR. PIKE: Objection.
 14 Form.
 15 A That specific, no, I don't recall
 16 that.
 17 **Q Have you ever been trained that the use**
 18 **of deadly force in response to a non-deadly**
 19 **aggression is unlawful?**
 20 MR. LENEGHAN: Objection to
 21 the form of that question.
 22 A I don't know. I don't know that I've
 23 been trained about that.
 24 **Q As you sit here, you can't recall any**
 25 **such training?**

Page 71

1 A I cannot, no.
 2 **Q Were you trained that an officer is not**
 3 **allowed to crate a deadly encounter and then**
 4 **shoot his way out of it?**
 5 A I don't recall ever hearing that
 6 before.
 7 **Q Were you ever trained that retaliatory**
 8 **force is not allowed?**
 9 A Yes.
 10 **Q Were you trained that force may not be**
 11 **used to punish an individual for**
 12 **disrespecting a police officer?**
 13 A I don't remember that ever being
 14 something I read.
 15 **Q Nothing you read. Anything anyone told**
 16 **you at the police department?**
 17 A Not that I can recall, no.
 18 **Q Were you trained that before**
 19 **displaying or using a firearm, a police**
 20 **officer has to allow the individual an**
 21 **opportunity to comply?**
 22 A I do not recall reading that or that
 23 being told to me.
 24 **Q When you are working secondary**
 25 **employment, you are required to follow the**

Page 72

1 **use of force policies issued by the police**
 2 **department, right?**
 3 A Yes.
 4 **Q Okay. Have you undergone any kind of**
 5 **tactical training as a police officer?**
 6 A Could you be more specific?
 7 **Q Like scenario-based training?**
 8 A Yes.
 9 **Q How often do you undergo scenario-based**
 10 **training?**
 11 A Generally that, anything along those
 12 lines would be done during in-service
 13 training, which is usually once a year.
 14 **Q And how long does the in-service**
 15 **training last?**
 16 A That -- that varies. It could last a
 17 whole week, it could last a day. It could
 18 last hours. It all depends on their -- when
 19 I say "their," I mean the curriculum of the,
 20 you know, in-service training.
 21 **Q Have you ever undergone scenario-based**
 22 **training involving a noncompliant or**
 23 **disorderly individual?**
 24 A Yes.
 25 **Q All right. And what techniques or**

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1 **tactics did you use during that scenario to**
 2 **diffuse the situation?**
 3 A Officer presence.
 4 **Q What else?**
 5 A The verbal commands and then it would
 6 -- it could escalate or it could not,
 7 depending on, you know, the specific
 8 scenario.
 9 **Q And if it were to escalate, you could**
 10 **use, say, one of your intermediate weapons?**
 11 A You could.
 12 **Q Okay. Were you -- have you ever been**
 13 **provided self-defense training?**
 14 A No, not that I can recall.
 15 **Q Whether by the police department or**
 16 **outside?**
 17 A No.
 18 **Q Have you ever done any martial arts?**
 19 A I have not.
 20 **Q Have you ever undergone hand-to-hand**
 21 **skills training through the police**
 22 **department?**
 23 A If I did, it would have been in the
 24 police academy and that's a long time ago
 25 and I don't recall anything specific about

Page 74

1 it, no.
 2 **Q As a Cleveland police officer, are you**
 3 **trained in rendering first aid?**
 4 A Yes.
 5 **Q Do you receive ongoing training for**
 6 **first aid?**
 7 A I wouldn't say ongoing.
 8 **Q Have you undergone first aid training**
 9 **more than once as a police officer?**
 10 A Yes.
 11 **Q About how many times have you undergone**
 12 **that training?**
 13 A Two or three times.
 14 **Q In your 27-year career?**
 15 A Correct.
 16 **Q Do you recall the last time you**
 17 **underwent that training?**
 18 A I believe 2017.
 19 **Q Have you ever been trained in rendering**
 20 **CPR or performing CPR?**
 21 A Yes.
 22 **Q How many different times have you been**
 23 **trained on CPR?**
 24 A It's two or three times there as well.
 25 **Q Would it be in the same training --**

Page 75

1 A Yes.
 2 **Q -- course?**
 3 A Yes.
 4 **Q Are you CPR certified?**
 5 A I don't believe I am. I don't believe
 6 I am, no.
 7 **Q Do you think you've ever been CPR**
 8 **certified?**
 9 A During those training periods, yes, but
 10 I believe it's time-specific.
 11 **Q So you'd undergo CPR training and you'd**
 12 **get the certification and then it would**
 13 **expire at a certain point?**
 14 A I believe. Please don't quote me on
 15 that, but I believe so.
 16 **Q Okay. And then first aid**
 17 **certification, did you likewise obtain that?**
 18 A It would be the same -- same type of
 19 training.
 20 **Q Same situation. So you don't know as**
 21 **you sit here today whether you still qualify**
 22 **as being first aid certified?**
 23 A Whether it's active or expired, I have
 24 no idea.
 25 **Q Okay. Is that a requirement as a**

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1 **Cleveland police officer, that you have**
 2 **active first aid certification?**
 3 A I don't know because of the word
 4 "active." I don't know if a card that says
 5 it's good for one year is active or it's
 6 expired, I don't know if that means, you
 7 know, I don't do it no more.
 8 **Q Okay. My question is do you know if**
 9 **the police department requires that you have**
 10 **an active first aid certification, whether**
 11 **you do have that or not?**
 12 A I do not know if they require it.
 13 **Q Okay. And the same question for CPR,**
 14 **any idea whether you're required to have an**
 15 **active --**
 16 A I do not know, believe me. I do not
 17 know.
 18 **Q All right. Have you ever been involved**
 19 **in a physical fight with anyone prior to**
 20 **January 13th, 2018?**
 21 A With anyone?
 22 **Q Yeah.**
 23 A Yes.
 24 **Q How many different times?**
 25 A I would say one other time.

Page 77	Page 79
<p>1 Q Tell me about that one.</p> <p>2 A 1992, I believe, and a bouncer at a</p> <p>3 nightclub assaulted me.</p> <p>4 Q Okay. Did you press charges?</p> <p>5 A I did.</p> <p>6 Q What happened with the criminal</p> <p>7 matter?</p> <p>8 A I believe he pled to an assault.</p> <p>9 Q What happened in terms of the fight?</p> <p>10 Did you guys exchange punches?</p> <p>11 A I did not exchange any punches with</p> <p>12 him. It was him punching me.</p> <p>13 Q That was 1992. Any other times you had</p> <p>14 been in a fight?</p> <p>15 A Not that I can recall, no.</p> <p>16 Q Not with a neighbor or family member or</p> <p>17 fellow officer?</p> <p>18 A No.</p> <p>19 Q Have you ever been violent with a</p> <p>20 family member?</p> <p>21 A Have not.</p> <p>22 Q Have you ever been violent around a</p> <p>23 family member?</p> <p>24 A No.</p> <p>25 Q Ever been violent towards anyone in</p>	<p>1 Q And why is it that you're wearing this</p> <p>2 uniform during this deposition?</p> <p>3 A No specific reason.</p> <p>4 Q Are you on duty right now?</p> <p>5 A I am not.</p> <p>6 Q Did you get clearance from the police</p> <p>7 department to wear your uniform and your gun</p> <p>8 during this deposition?</p> <p>9 A I did not.</p> <p>10 Q Did you check whether this building is</p> <p>11 a no-firearm building?</p> <p>12 A I did not check it, no.</p> <p>13 Q Okay. And where do you keep your gun</p> <p>14 when it's not on you physically and you're</p> <p>15 not at home?</p> <p>16 A It would be at home.</p> <p>17 Q Okay. Do you have anyplace in your car</p> <p>18 that you could put it securely?</p> <p>19 A No.</p> <p>20 Q Do you have bullets in that gun right</p> <p>21 now?</p> <p>22 A I do.</p> <p>23 Q Okay. Let's talk a little bit more</p> <p>24 about your career as a Cleveland police</p> <p>25 officer. Do you remember your date of</p>
Page 78	Page 80
<p>1 your neighborhood?</p> <p>2 A No.</p> <p>3 Q Ever been violent towards a colleague?</p> <p>4 A No.</p> <p>5 Q Have you ever threatened a colleague</p> <p>6 before?</p> <p>7 A No.</p> <p>8 Q Ever threatened a family member?</p> <p>9 A No.</p> <p>10 Q Or a neighbor?</p> <p>11 A No.</p> <p>12 Q In this 1992 incident with the bouncer,</p> <p>13 were you on duty as a police officer?</p> <p>14 A I was not.</p> <p>15 Q Were you working secondary employment?</p> <p>16 A I was not.</p> <p>17 Q By the way, we talked about your</p> <p>18 uniform. Are you carrying any weapons on</p> <p>19 you right now?</p> <p>20 A I am.</p> <p>21 Q Can you stand up and show me what</p> <p>22 weapons you're carrying?</p> <p>23 A Sidearm.</p> <p>24 Q Okay.</p> <p>25 A That's it. That's all I have.</p>	<p>1 hire?</p> <p>2 A January 6, 1992.</p> <p>3 Q And before being hired, did you go</p> <p>4 through OPOTA training?</p> <p>5 A Not before, no.</p> <p>6 Q Okay. But you did undergo -- you did</p> <p>7 go through the police academy?</p> <p>8 A I did.</p> <p>9 Q When you were hired as a patrol</p> <p>10 officer?</p> <p>11 A I was hired as a recruit.</p> <p>12 Q Okay. And when you started, what was</p> <p>13 your rank?</p> <p>14 A When I started on January 6th, 1992?</p> <p>15 Recruit, police recruit.</p> <p>16 Q Okay. And for how long were you a</p> <p>17 police recruit?</p> <p>18 A Six months.</p> <p>19 Q And then what did you become?</p> <p>20 A Patrolman.</p> <p>21 Q Did you ever undergo any mental fitness</p> <p>22 or psychological testing at any point in</p> <p>23 your 27-year career?</p> <p>24 A In the police academy, physical</p> <p>25 testing.</p>

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1 **Q Physical testing. Any mental health**
 2 **testing?**
 3 A I don't believe so, not in the police
 4 academy, no. No.
 5 **Q Any mental health testing after you got**
 6 **out of the police academy?**
 7 A No, nothing -- no.
 8 **Q Do you have to undergo physical testing**
 9 **on a regular basis as a Cleveland police**
 10 **officer?**
 11 A No.
 12 **Q Is that something you have ever**
 13 **undergone outside of the academy, have you**
 14 **ever undergone physical testing by the**
 15 **Cleveland Police Department?**
 16 A I have -- no, I have not.
 17 **Q Did you ever receive a promotion?**
 18 A I did.
 19 **Q When did you receive your first**
 20 **promotion?**
 21 A December -- I believe it's the 9th,
 22 December 9th of 2002.
 23 **Q And what did you have to do to attain**
 24 **the promotion to sergeant?**
 25 A A written and verbal exam.

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1 **Q Did you pass the written and verbal**
 2 **exams the first time you took them?**
 3 A I did.
 4 **Q Did you ever receive any kind of**
 5 **demotion?**
 6 A I did.
 7 **Q When did that occur?**
 8 A 2013, I believe.
 9 **Q And what were the circumstances of the**
 10 **demotion?**
 11 A An investigation by an investigative
 12 reporter, Carl Monday.
 13 **Q And what did his investigation reveal?**
 14 A I was at home with the police car.
 15 **Q And did this lead to any kind of**
 16 **criminal investigation?**
 17 A Yes.
 18 **Q Did the police department itself**
 19 **conduct its own investigation?**
 20 A I'm sure they did.
 21 **Q What was the outcome of the criminal**
 22 **matter?**
 23 A I pled guilty to a misdemeanor
 24 falsification.
 25 **Q What were you falsifying?**

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1 A It was specific to, like, time cards.
 2 Yeah, time cards.
 3 **Q Am I correct in understanding that you**
 4 **were falsifying time cards to indicate you**
 5 **were on duty when, in fact, you were at**
 6 **home?**
 7 A No, that's not it.
 8 **Q Well, what is it?**
 9 A It didn't have -- I had permission to
 10 be at home, but it wasn't reflected on my
 11 time cards duty report.
 12 **Q Were you paid for the time you were at**
 13 **home?**
 14 A Yes.
 15 **Q Is that where the falsification stems**
 16 **from, that you were paid for time when you**
 17 **were at home when you were not supposed to**
 18 **be?**
 19 A You know, I'm not really sure of the,
 20 you know, the specifics of that. I'm not
 21 really sure.
 22 **Q But you did plead guilty to**
 23 **falsification?**
 24 A I did.
 25 **Q And what were you pleading guilty to**

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1 **falsifying?**
 2 A Again, it was a part of falsification
 3 that dealt specifically with report,
 4 writings, things of that nature.
 5 **Q And specifically what was false about**
 6 **it?**
 7 A That it wasn't reflected on a duty
 8 report that I was at my house.
 9 **Q I see. So you would fill out duty**
 10 **reports, but you wouldn't indicate that you**
 11 **were at home for a certain time period?**
 12 A Yes.
 13 **Q And what was the outcome of the**
 14 **Cleveland Police Department investigation?**
 15 **Did they find that you had committed certain**
 16 **violations of rules or regulations?**
 17 A Yes, but I don't know which ones
 18 specifically.
 19 **Q Do you recall how many different**
 20 **criminal charges were asserted against you**
 21 **in the criminal matter?**
 22 A I do not.
 23 **Q Okay. And you were represented by a**
 24 **criminal defense lawyer in that proceeding?**
 25 A Yes.

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1 **Q What was the time period at issue here**
2 **with respect to the false duty reports or**
3 **time cards?**
4 A What was the time frame?
5 **Q Yeah. When did this occur?**
6 A In 2012 I believe is when it
7 occurred.
8 **Q And do you know how it was discovered**
9 **that you were at home when you were supposed**
10 **to be on duty?**
11 A Through the TV reporter's
12 investigation.
13 **Q My understanding is that the following**
14 **criminal charges were asserted against you.**
15 **Tell me if this is also your understanding.**
16 **Theft in office; does that sound right?**
17 A Yes.
18 **Q Aggravated theft?**
19 A I don't recall that.
20 **Q Falsification?**
21 A Yes.
22 **Q Seven counts of tampering with**
23 **records?**
24 A For some reas -- yeah, okay. Yes,
25 yes.

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1 **Q Dereliction of duty?**
2 A I don't recall the dereliction of
3 duty.
4 **Q So I take it you didn't come forward to**
5 **the police and tell them about this activity**
6 **before you were discovered by Carl Monday?**
7 A That's correct.
8 **Q And so as a result of your activities**
9 **for which you were criminally charged and**
10 **ultimately pleaded guilty, you say you were**
11 **demoted from sergeant?**
12 A Yes.
13 **Q From sergeant back to patrol officer?**
14 A Yes.
15 **Q What other punishments did you sustain**
16 **as a result of this incident through the**
17 **police department?**
18 A I was suspended for 30 days.
19 **Q With or without pay?**
20 A Without.
21 **Q And in terms of the criminal matter,**
22 **what was your sentence?**
23 A It was six months and a thousand dollar
24 fine.
25 **Q Can we agree that you pleaded guilty to**

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1 **a crime of dishonesty?**
2 A Given what is not on paper with the
3 court and what I was there doing, I would
4 say I wasn't being dishonest, no.
5 **Q You don't believe you were being**
6 **dishonest?**
7 A I don't believe I was, no.
8 **Q Okay. And so why did you plead guilty**
9 **to falsification of records?**
10 A Because, I mean, I had to. I had to
11 plead to it. I couldn't just walk away from
12 it. I had to take responsibility and I
13 did.
14 **Q Okay. And what were you taking**
15 **responsibility for is what I'm trying to**
16 **understand?**
17 A I was taking responsibility for the way
18 it looked.
19 **Q And how do you think it looked?**
20 A Bad, terrible.
21 **Q But not dishonest?**
22 A No.
23 **Q Did you ever retain -- not retain. Did**
24 **you ever have your sergeant status renewed?**
25 A Yes.

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1 **Q When did that occur?**
2 A I believe it was July of 2014.
3 **Q And how were you able to get back your**
4 **rank of sergeant after this incident?**
5 A I don't understand the question.
6 **Q Did you have to take the written and**
7 **verbal test again?**
8 A No.
9 **Q Did you have to do anything to get your**
10 **promotion back or did it come back**
11 **automatically?**
12 A It just -- it came back automatically.
13 **Q And whose decision was that, as far as**
14 **you're aware?**
15 A I believe the Director of Public
16 Safety.
17 **Q In your position as a police sergeant,**
18 **are you considered a supervisor?**
19 A Yes.
20 **Q Over how many officers would you**
21 **consider yourself to be a supervisor?**
22 A I would say 20 plus. I don't know the
23 specific number.
24 **Q Are they all within your same district?**
25 A Same district and same shift.

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1 **Q You work in the Fifth District?**
 2 A That's correct.
 3 **Q How many districts does the Cleveland**
 4 **Police Department --**
 5 A Five.
 6 **Q When did you start working in the Fifth**
 7 **District?**
 8 A It would have been -- I want to say it
 9 was June of 2013.
 10 **Q Shortly after the incident involving**
 11 **the time cards?**
 12 A Yes.
 13 **Q What district were you working in at**
 14 **that time, the Fourth District?**
 15 A Yes.
 16 **Q When did you first start working in the**
 17 **Fourth District?**
 18 A When I was first promoted.
 19 **Q In 2002?**
 20 A Yes.
 21 **Q Okay. And then before that point in**
 22 **time, which district did you work in?**
 23 A The Third District.
 24 **Q Did you work in any other district**
 25 **other than the Third District?**

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1 A No. No.
 2 **Q Who determines what district an officer**
 3 **is assigned to?**
 4 A Chief of police.
 5 **Q So the chief of police is the one who**
 6 **determined that you would be assigned to the**
 7 **Fifth District in June of 2013?**
 8 A Yes.
 9 **Q And do you have an understanding why**
 10 **the chief assigned you to that district at**
 11 **that time?**
 12 A I do not, no.
 13 **Q What are your duties as a police**
 14 **sergeant?**
 15 A Basically you make sure that the patrol
 16 officers are answering the radio, responding
 17 to the assignments, and if there's reports
 18 to be generated, make sure that they're
 19 generating the reports.
 20 You review those reports and then you
 21 would forward them to any -- if there's an
 22 investigative unit that needs to follow up
 23 on them or, you know, whatever the case is.
 24 **Q On average, how many hours are you on**
 25 **duty per week?**

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1 A 48.
 2 **Q And where do you spend the majority of**
 3 **your time, at the district office or --**
 4 A Both. It varies, but in the building
 5 and then, of course, on the road as well.
 6 **Q And what -- under what circumstances**
 7 **would you be on the road, if one of your**
 8 **patrol officers has an issue or regular**
 9 **patrol?**
 10 A Both.
 11 **Q Okay.**
 12 A Both.
 13 **Q And do you have a schedule that**
 14 **dictates when you're going to be on patrol**
 15 **versus when you're going to be in the**
 16 **office?**
 17 A No.
 18 **Q And when you're on patrol, are you in**
 19 **effect supervising another patrol officer?**
 20 A Not specifically, no.
 21 **Q So you might be on patrol by yourself,**
 22 **not necessarily with another officer?**
 23 A I wouldn't be with a partner. I would
 24 be by myself.
 25 **Q Okay. And so can you give me a better**

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1 **sense of how many hours during a given week**
 2 **you are on patrol?**
 3 A I couldn't nail it down from one day to
 4 the next.
 5 **Q And do you have -- can you help me**
 6 **understand what would determine whether**
 7 **you'd be on patrol on any given day?**
 8 A Mostly if you were needed somewhere in
 9 a supervisory capacity.
 10 **Q Okay. So it's kind of on an as-needed**
 11 **basis; is that fair to say?**
 12 A That's fair, yeah.
 13 **Q As a sergeant, do you have the**
 14 **responsibility to evaluate the performance**
 15 **of other officers from time to time?**
 16 A Yes.
 17 **Q And I take it you've received training**
 18 **on how to effectively evaluate other**
 19 **officers?**
 20 A I haven't received any training.
 21 **Q Okay. So how did you learn how to**
 22 **evaluate other officers?**
 23 A Could you be more specific on what type
 24 of evaluation you mean?
 25 **Q Sure. Well, let me ask you. Do you**

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1 ever provide formal written evaluations for
2 any patrol officers you supervise?

3 A You do, yes.

4 Q Okay. And so have you received any
5 formal training in order to --

6 A To do that, no.

7 Q And so how have you learned to do that,
8 just on the job?

9 A Yes.

10 Q Maybe talking with other officers,
11 other sergeants, if necessary?

12 A Yes.

13 Q Have you yourself ever provided
14 training to other officers?

15 A I have not, no.

16 Q All right. You told us about the Carl
17 Monday incident, the falsification of
18 records. Have you ever been disciplined at
19 any other time during your 27-year career?

20 A Yes.

21 Q On how many different occasions have
22 you been disciplined?

23 A I couldn't tell you a specific time or
24 date or times.

25 Q Okay. I did receive some documentation

1 case.

2 A No, not at all.

3 Q Okay. It looks like you received a
4 written warning for working secondary
5 employment without approval from the police
6 department. This is in 2011.

7 A I sure don't remember that.

8 Q Okay. In 2008, it appears you were
9 given a written reprimand after engaging in
10 improper procedures while investigating the
11 use of non-deadly force by members under
12 your command. Do you recall that?

13 A Yeah, I believe that was regarding the
14 investigation over the timeliness of it.

15 Q And my understanding from your
16 personnel file is that you admitted to some
17 rule violations?

18 A Yes.

19 Q One of which was neglect of duty?

20 A Right, yes.

21 Q And incompetency or inefficiency in
22 performance of duties. Does that sound
23 right?

24 A Again, I, you know -- that's what year
25 again?

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1 from the City of Cleveland and I'll go
2 through what documents I have or what
3 information I have and you tell me if this
4 sounds accurate, okay?

5 A Fair.

6 Q So my understanding is that in 2014,
7 you were demoted to patrol officer and
8 suspended for 30 days for falsifying daily
9 duty reports. Does that sound about right?

10 A Yes.

11 Q In 2012, you were given a written
12 warning for failing to investigate a use of
13 force incident involving another officer; is
14 that right?

15 A Yes.

16 Q And then in 2011, you were disciplined
17 for failing to appear in court for a case
18 which resulted in the case being dismissed.
19 Does that sound right?

20 A I do not recall being disciplined for
21 anything like that.

22 Q Okay. Does that particular incident
23 ring a bell?

24 A Appearing -- not appearing in court?

25 Q Yeah, not appearing in court for a

1 Q 2011 you were given a written
2 reprimand.

3 A I don't remember the specifics of
4 it.

5 Q Okay. Do you have any reason to doubt
6 that that was the outcome of that
7 discipline?

8 A I don't have any reason to doubt it,
9 but I also don't remember it.

10 Q My understanding is that in 2006, you
11 were given a verbal warning for being
12 involved in an off-duty physical altercation
13 with another member of the police force in a
14 public place.

15 A Yes.

16 Q Okay. Earlier I asked you if you'd
17 been in any fights before, but you didn't
18 mention this one. Would this be considered
19 a fight?

20 A On his part probably.

21 Q Okay. Well, tell me what happened.

22 A He assaulted me.

23 Q And did you throw any punches?

24 A I did not.

25 Q How many times did he attack you or

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1 **punch you?**

2 A I do not remember the time -- the
3 number of times because I was knocked
4 unconscious.

5 **Q Did you instigate the fight?**

6 A No.

7 **Q Why was he attacking you?**

8 A You'd have to ask him. I don't know.

9 **Q Did you press charges?**

10 A I did not.

11 **Q Why were you disciplined if he was the
12 one that attacked you?**

13 A It's what the department does.

14 **Q So if you're an innocent victim of an
15 attack, you're going to be disciplined?**

16 A I -- you know, I mean, I can't go about
17 -- I don't know how to answer that because
18 it's just the way that you're treated as a
19 policeman.

20 **Q Is it your position that you were the
21 innocent victim of an assault?**

22 A Yes.

23 **Q Okay. And did you explain to your
24 supervisors that you were the innocent
25 victim and that you should receive no**

1 A I do not.

2 **Q Do you know how old he is,
3 approximately?**

4 A No.

5 **Q Where did this altercation take place?**

6 A It was at a bar on Memphis and Fulton
7 area.

8 **Q Do you know the name of the bar?**

9 A It's no longer there.

10 **Q Were you drinking that night?**

11 A I don't believe I was when this
12 happened, no.

13 **Q How long had you been at the bar before
14 the attack occurred?**

15 A I don't recall.

16 **Q Was anybody with you?**

17 A No.

18 **Q So it was just you and Thomas Barnes
19 at the bar or were there other patrons
20 there?**

21 A There might have been others there. I
22 don't recall how many people or name
23 specific.

24 **Q Did you exchange words with Thomas
25 before he attacked you?**

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1 **discipline for this incident?**

2 A I don't remember specifics back to
3 2006.

4 **Q Did you receive any medical attention
5 related to that incident?**

6 A Yes, I believe I did, yes.

7 **Q What kind of medical attention did you
8 get?**

9 A I want to say that I was just treated
10 -- treated and released for maybe some --
11 for stitches. I think I got stitches.

12 **Q Do you remember where you were
13 treated?**

14 A Metro, I believe. Metro.

15 **Q What was the name of the officer that
16 you claim assaulted you?**

17 A Thomas Barnes.

18 **Q Is he still with the Cleveland Police
19 Department?**

20 A Yes, I believe he is.

21 **Q Do you know what his rank is?**

22 A I do not.

23 **Q Does he work in your district?**

24 A He does not.

25 **Q Do you know what district he works in?**

1 A Just discussion, not words.

2 **Q What was the discussion about?**

3 A I don't recall. It's so long ago, I
4 don't recall it.

5 **Q Did you make any documentation related
6 to the incident?**

7 A I don't believe so, no.

8 **Q Did you report it to anyone at the
9 police department?**

10 A I didn't report it specifically, but it
11 was reported.

12 **Q Do you know by whom?**

13 A I do not know by whom, no.

14 **Q Do you know if Thomas Barnes reported
15 it?**

16 A I don't know.

17 **Q Was a hearing ever conducted by the
18 police department about the matter?**

19 A I don't remember attending one.

20 **Q Okay. Were you represented by a
21 lawyer?**

22 A No, I don't believe so.

23 **Q Or a member of the FOP?**

24 A Again, I don't remember being
25 represented or being at anything.

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1 **Q After you were issued a verbal warning**
 2 **for this incident, did you file a grievance**
 3 **through the union?**
 4 A No.
 5 **Q Did you do anything to contest the**
 6 **discipline you received for this incident?**
 7 A No.
 8 MR. TOR: How much
 9 longer do we have on the tape?
 10 VIDEOGRAPHER: 15 minutes.
 11 BY MR. TOR:
 12 **Q I understand you've been involved in a**
 13 **number of different lawsuits over the years;**
 14 **fair to say?**
 15 A I don't know.
 16 **Q Okay. We'll go through some of these.**
 17 **I see four different divorce proceedings.**
 18 A Four?
 19 **Q Yeah. It may look like four, but the**
 20 **divorce proceeding filed in 1999 with your**
 21 **first wife, Kristine, and you told me**
 22 **earlier you were divorced from her as of**
 23 **2000?**
 24 A Yes.
 25 **Q Okay. It looks like maybe you filed a**

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1 **divorce proceeding and she also filed a**
 2 **divorce proceeding at the same time?**
 3 A I don't know.
 4 **Q Do you know if she made any claims**
 5 **against you that you were in any way violent**
 6 **or abusive towards her?**
 7 A I don't believe she did. I don't
 8 remember.
 9 **Q Okay. Have you ever given her a reason**
 10 **-- did you ever give her a reason --**
 11 A No.
 12 **Q -- to think that you were a violent**
 13 **person?**
 14 A No.
 15 **Q All right. And then you told me you**
 16 **were divorced from your second wife, Lanett,**
 17 **sometime in 2018; does that sound right?**
 18 A Yes.
 19 **Q When did this divorce occur relative to**
 20 **the incident we're here to talk about on**
 21 **January 13, 2018?**
 22 A It was a dissolutionment finalized on
 23 Valentine's Day of last year.
 24 **Q And do you remember when you first**
 25 **received notice of the filing of a divorce**

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1 **proceeding? Was it before or after the**
 2 **incident?**
 3 A It was before, I believe.
 4 **Q Like a few days before?**
 5 A Oh, no. I don't know. I would say
 6 months before.
 7 **Q Okay. Did you give your second wife**
 8 **any reason to think you were a violent --**
 9 A No.
 10 **Q -- individual?**
 11 A No.
 12 **Q Do you know if she asserted any claims**
 13 **against you that you were abusive or**
 14 **violent?**
 15 A No.
 16 **Q I see there's some civil matters in**
 17 **which you were a named party. There's a**
 18 **1994 case where the other side was Shark**
 19 **Club?**
 20 A That's the bouncer.
 21 **Q So you sued the bouncer related to that**
 22 **incident?**
 23 A Sued the club I thought.
 24 **Q You sued the club. Okay. So you sued**
 25 **the club because of the incident related to**

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1 **the bouncer?**
 2 A Correct.
 3 **Q What was the outcome of that lawsuit?**
 4 A There was money awarded.
 5 **Q To you?**
 6 A Yes. The amount, I can't recall the
 7 amount.
 8 **Q Okay. How far along in the case did**
 9 **you all get before there was a resolution?**
 10 A I believe that it went -- it was in
 11 court, ready for trial.
 12 **Q Did you have your deposition taken?**
 13 A I don't believe so. I don't recall
 14 being -- being -- having it taken.
 15 **Q Do you recall who represented you, what**
 16 **lawyer represented you in that lawsuit?**
 17 A No.
 18 **Q I see there's a lawsuit filed on your**
 19 **behalf in 2000 against the RTA.**
 20 A RTA? Oh, I was hit by a bus while I
 21 was working.
 22 **Q Oh, okay. Where did this occur?**
 23 A On Superior. Superior and almost like
 24 how Huron and Superior, even though they
 25 don't technically meet, they meet. Over in

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1 that area.

2 **Q And what were your injuries?**

3 A Back injury is all I can really

4 remember.

5 **Q How bad was the injury?**

6 A You know, hospitalized, but then

7 treated and released. Nothing -- nothing,

8 you know, long-term.

9 **Q And you filed a lawsuit against RTA.**

10 **Did you recover any money?**

11 A I believe there was some money

12 recovered, yes. Yes, there was, yes.

13 **Q Did you make a Workers' Compensation**

14 **claim?**

15 A I believe so, yes.

16 **Q And then I see you filed a civil**

17 **lawsuit in 1996 against your employer, the**

18 **City of Cleveland. What was that case**

19 **about?**

20 A I don't recall ever filing anything

21 against the city.

22 **Q Another lawsuit, civil lawsuit filed by**

23 **you in 1997, also against the City of**

24 **Cleveland. Does that ring a bell?**

25 A Hmm-mm, not at all.

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1 **Q There's some cases filed by the Ohio**

2 **Department of Taxation.**

3 A Yeah, I owed taxes.

4 **Q Back taxes?**

5 A Yeah. They've since been paid, the

6 taxes have been.

7 **Q Was it that you were not reporting all**

8 **your income?**

9 A No.

10 **Q What were the circumstances?**

11 A Just owing more than I could pay at the

12 end of the year, so you get involved with

13 attorneys like you gentlemen, you have to

14 pay, pay monthly down until it's gone.

15 **Q Have you ever failed to fully report**

16 **all of your income for any tax year?**

17 A No.

18 **Q 2013, looks like you were a defendant**

19 **in a civil lawsuit in which Ocwen Loan**

20 **Servicing was the plaintiff?**

21 A That's -- that's got to be with the

22 house when I -- I think they were -- they

23 are or they were a mortgage type thing and I

24 re --

25 **Q Financed?**

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1 A It's not a refinance. It would be --

2 what's the term? Oh, boy. It was sold from

3 them to another mortgage company, but I

4 don't know what the exact term of the deal

5 was.

6 **Q And do you have any recollection of why**

7 **you were sued?**

8 A No, I do not.

9 **Q What happened with that case?**

10 A I don't remember it and, I mean, I

11 still have the house, so I don't know the

12 outcome.

13 **Q Do you own any other real estate**

14 **property?**

15 A I do not.

16 **Q Now, you told me about the Workers'**

17 **Comp claim you believe you filed with**

18 **respect to the bus incident. Prior to the**

19 **incident that occurred at The Corner Alley,**

20 **had you ever filed a Workers' Comp claim?**

21 A Yes.

22 **Q How many different times?**

23 A Not many, but specific number, I

24 couldn't tell you a number.

25 **Q More than three?**

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1 A Been pretty fortunate to where I

2 haven't really been injured a lot, so I

3 would say I don't know. I don't -- I

4 honestly don't know the number. I could say

5 three, it might be six. I don't know that.

6 I can't remember right now. I don't think

7 it's six, but I don't know if it's three.

8 **Q Okay. So let's talk in terms of**

9 **injuries that you sustained while on the**

10 **job. So the bus incident --**

11 A Right.

12 **Q -- involving the RTA. You made a**

13 **Workers' Comp claim for this incident that**

14 **occurred at The Corner Alley, right?**

15 A Yes.

16 **Q Tell me about other incidents where you**

17 **believe you were injured on the job.**

18 A I had the tendons in one of my fingers

19 -- I don't know what the word would be.

20 Obviously, they can't be broken I don't

21 think.

22 **Q How did that happen?**

23 A It happened after a vehicle pursuit

24 when myself and a large number of officers

25 were fighting with the suspect, I believe,

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1 after a foot chase, but I don't know what
2 year that happened or anything about that,
3 you know, and --

4 **Q Do you recall getting any medical
5 treatment?**

6 A I believe, I believe so. I went to --
7 probably would have went to Charity Hospital
8 at that time because that's where -- I was
9 in the Third District at that time I
10 believe.

11 **Q Did you have to take time off of work
12 for your injury?**

13 A I don't think so.

14 **Q Were you involved in the struggle or
15 the scuffle with this individual?**

16 A No, the other officers were. I
17 remember it being icy and -- like
18 ice-covered area where we were at and I
19 remember falling, injuring my hand.

20 **Q I see. So you fell and that's how you
21 injured your hand?**

22 A Right.

23 **Q Okay. Tell me about the other
24 incidents where you believe you were injured
25 on the job.**

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1 A I want to say a car accident, I think,
2 where we were hit from behind, like, you
3 know, with whiplash.

4 **Q Do you remember what year that happened
5 in?**

6 A No. This is -- these incidents would
7 be in the '90s, the early '90s, you know.

8 **Q You said "we." Was somebody else in
9 the car with you?**

10 A Again, back then, I worked with a
11 partner, but who it was, I have no idea.

12 **Q How many different partners have you
13 had over the years?**

14 A Oh, boy. Do you want a number?

15 **Q Yeah.**

16 A 20, 25 guys, girls.

17 **Q Okay. All right. Any other incidents
18 where you were injured on the job?**

19 A Not that I can recall, no.

20 **Q So you've told me about three that you
21 do remember in addition to the one that
22 happened at The Corner Alley, right?**

23 A Yeah.

24 **Q So at least four Workers' Comp claims?**

25 A Okay.

1 **Q Do you think there may have been more?**

2 A Again, not really sure.

3 **Q Is there any way you could find out if
4 you had other Workers' Comp claims?**

5 A I wouldn't know where to start.

6 **Q Okay. When you had the Workers' Comp
7 claims, did you have a lawyer representing
8 you?**

9 A Yes.

10 **Q Who was the lawyer or lawyers?**

11 A George Mineff, I believe.

12 **Q George?**

13 A Mineff. He's represented me on those.

14 **Q Were you ever denied a Workers' Comp
15 claim?**

16 A No.

17 **Q Did you ever have any type of personal
18 injury other than what we've already talked
19 about?**

20 A Not that I can recall, no.

21 **Q Has anyone ever filed a restraining
22 order against you?**

23 A Not that I can recall, no.

24 **Q Or a protective order?**

25 A No.

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1 VIDEOGRAPHER: Three
2 minutes of tape.

3 MR. TOR: All right.

4 Let's take a break.

5 VIDEOGRAPHER: We're off the
6 record.

7 - - -

8 (Short recess to change tapes.)

9 - - -

10 VIDEOGRAPHER: Tape three.

11 We are back on the record.

12 BY MR. TOR:

13 **Q All right, sir, we're going to
14 continue.**

15 **As of the date of the incident, January
16 13th, 2018, did you have any medical
17 conditions for which you were being actively
18 treated by a doctor?**

19 A No.

20 **Q Were you on any prescription
21 medication?**

22 A Yes. I take high blood pressure and
23 cholesterol medication.

24 **Q Other than high blood pressure and
25 high cholesterol, did you have any other**

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1 **medical conditions or issues at the time of**
 2 **the incident?**
 3 A No.
 4 **Q Had you ever had any surgeries before?**
 5 A Yes.
 6 **Q How many different surgeries?**
 7 A One.
 8 **Q And what was it?**
 9 A To repair a herniated disc in January
 10 of 2017.
 11 **Q Do you know what caused the herniated**
 12 **disc?**
 13 A I believe the doctor told me just old
 14 age.
 15 **Q Did you make a Workers' Compensation**
 16 **claim?**
 17 A No.
 18 **Q Did you file any lawsuit related to**
 19 **that?**
 20 A No.
 21 **Q Have you ever filed for disability?**
 22 A I have not, no.
 23 **Q When did this surgery take place?**
 24 A January of 2017.
 25 **Q Okay. I saw in your medical records**

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1 **reference to a traumatic subarachnoid**
 2 **hemorrhage in 2013. Do you know what that's**
 3 **about?**
 4 A I was in a car accident.
 5 **Q Is that the car accident you were**
 6 **telling me about before where you were**
 7 **rear-ended?**
 8 A No. I was -- no.
 9 **Q You were not working at that time?**
 10 A I was not working, no.
 11 **Q Okay. Well, when did this car crash**
 12 **take place?**
 13 A I want to say it was October of '13.
 14 **Q Where did it take place?**
 15 A Memphis, West 58th, I think, somewhere
 16 in that area, right around there, 57th,
 17 58th.
 18 **Q Tell me about the crash. What**
 19 **happened?**
 20 A Lost control of my vehicle and hit a
 21 tree.
 22 **Q No other cars were involved?**
 23 A No.
 24 **Q What time of day was this?**
 25 A Say night.

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1 **Q Were you coming off work?**
 2 A Yes. Yes.
 3 **Q Were you on duty -- were you coming off**
 4 **work for the police department or were you**
 5 **coming off some kind of secondary**
 6 **employment?**
 7 A It wouldn't have been for the city. It
 8 had to have been secondary employment, but
 9 where I was coming from, I don't recall.
 10 **Q Did you have any alcohol in your**
 11 **system?**
 12 A No.
 13 **Q Any drugs in your system?**
 14 A No.
 15 **Q Were you taken to a hospital from the**
 16 **scene?**
 17 A Yes.
 18 **Q Do you know what hospital it was?**
 19 A Metro I believe.
 20 **Q Were you treated and released?**
 21 A I was kept overnight.
 22 **Q And how did the doctors treat your**
 23 **injury?**
 24 A I don't think they did anything
 25 specific to me. The only thing that I

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1 remember being treated for is a broken
 2 wrist; fractured wrist I should say.
 3 **Q Your left wrist?**
 4 A I think so, yeah.
 5 **Q What kind of fracture was it? Did they**
 6 **tell you?**
 7 A No idea.
 8 **Q Did you have to miss any work?**
 9 A I don't recall missing any work, no.
 10 **Q Can you just show me where on your**
 11 **wrist the fracture occurred?**
 12 A I mean, it was cast. I think it was
 13 cast, you know, in the hand and wrist area,
 14 maybe a little bit past it.
 15 **Q How long did you wear the cast for?**
 16 A I don't know. Six to eight weeks. I
 17 don't know how long -- however long you have
 18 to wear it.
 19 **Q Were you able to perform your regular**
 20 **duties as a police officer during the time**
 21 **you were wearing --**
 22 A Yes.
 23 **Q Were you on any restricted duties?**
 24 A I don't believe so, no.
 25 **Q Did you undergo any surgery for the**

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<p>1 fracture?</p> <p>2 A No.</p> <p>3 Q Was anyone in the car with you at the</p> <p>4 time?</p> <p>5 A No.</p> <p>6 Q Who is your family physician or primary</p> <p>7 care physician?</p> <p>8 A I had one, but his license has been</p> <p>9 revoked, so now I go to Metro.</p> <p>10 Q Who do you see there? Any doctor in</p> <p>11 particular?</p> <p>12 A Dr. D'Onofrio I think her name is. I</p> <p>13 only saw her one time.</p> <p>14 Q Was it before or after this incident?</p> <p>15 A After.</p> <p>16 Q Who was prescribing you the blood</p> <p>17 pressure and cholesterol medication as of</p> <p>18 the time --</p> <p>19 A That would have been Dr. Kavlich who</p> <p>20 had his license suspended, revoked, I don't</p> <p>21 know which it is.</p> <p>22 Q I see. So Dr. Kavlich was your primary</p> <p>23 care physician until he had his license</p> <p>24 taken away?</p> <p>25 A He was, yes.</p>	<p>1 A No.</p> <p>2 Q And when was the last time you drank</p> <p>3 alcohol before the incident?</p> <p>4 A I'm not that big a drinker. I couldn't</p> <p>5 even tell you when.</p> <p>6 Q I do have a few follow-up questions</p> <p>7 based on some of the topics we covered</p> <p>8 before.</p> <p>9 The altercation at the bar that</p> <p>10 involved Thomas Barnes, the other officer,</p> <p>11 were you or was he in police uniform at the</p> <p>12 time of the incident?</p> <p>13 A No.</p> <p>14 Q Did you or he have a firearm on you at</p> <p>15 the time?</p> <p>16 A I know I didn't.</p> <p>17 Q Did anybody -- did either of you draw a</p> <p>18 firearm during the altercation?</p> <p>19 A I know I didn't.</p> <p>20 Q Did he?</p> <p>21 A Not that I recall.</p> <p>22 Q Going back to this Carl Monday</p> <p>23 investigative reporting incident, you told</p> <p>24 me, I think, that you had permission to be</p> <p>25 at home?</p>
Page 118	Page 120
<p>1 Q Do you know how soon before the</p> <p>2 incident you last saw him, Dr. Kavlich?</p> <p>3 A No.</p> <p>4 Q Where did he practice?</p> <p>5 A Berea; Berea, Ohio.</p> <p>6 Q Was he affiliated with any hospital</p> <p>7 that you're aware of?</p> <p>8 A Not that I'm aware of, no.</p> <p>9 Q Was he the last doctor you saw before</p> <p>10 the incident?</p> <p>11 A Before which incident?</p> <p>12 Q The Corner Alley incident.</p> <p>13 A Yes.</p> <p>14 Q So you told me as of the date of that</p> <p>15 incident, you had blood pressure medication</p> <p>16 and cholesterol medication. Did you take</p> <p>17 any over-the-counter drugs that day?</p> <p>18 A Not that I recall taking, no.</p> <p>19 Q And did you consume any alcohol that</p> <p>20 day, January 13th --</p> <p>21 A I did not.</p> <p>22 Q Did you consume any other drugs other</p> <p>23 than the two --</p> <p>24 A No.</p> <p>25 Q -- prescribed drugs?</p>	<p>1 A I did.</p> <p>2 Q Okay. Who gave you that permission?</p> <p>3 A It would have been my lieutenant.</p> <p>4 Q Lieutenant -- what's his or her name?</p> <p>5 A Anthony George.</p> <p>6 Q Did Lieutenant George defend you, stand</p> <p>7 up for you in this case, either the criminal</p> <p>8 case or the police investigation, and say</p> <p>9 actually he had permission to be at home?</p> <p>10 A No, he did not.</p> <p>11 Q Okay. And did you feel betrayed by</p> <p>12 that?</p> <p>13 A Not at all.</p> <p>14 Q Okay. Well, wouldn't you expect him to</p> <p>15 tell the truth if you had permission to be</p> <p>16 at home so that you wouldn't be accused of</p> <p>17 something you don't think you did?</p> <p>18 A If he was able to, he would have.</p> <p>19 Q Well why do you think he was not able</p> <p>20 to?</p> <p>21 A He's dead.</p> <p>22 Q Okay. When did he die?</p> <p>23 A I was still in the Fourth District.</p> <p>24 It's got to be -- it's got to be 2012.</p> <p>25 Q Before or after your activities were</p>

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1 **uncovered by Carl Monday?**
 2 A He died I want to say after, after I
 3 think. I think. I couldn't give you
 4 specific dates.
 5 **Q Is there anyone else that can**
 6 **corroborate --**
 7 A Not to my knowledge, no.
 8 **Q -- your claim that Lieutenant George**
 9 **gave you permission?**
 10 A Not to my knowledge, no.
 11 **Q So just you and Lieutenant George, who**
 12 **is deceased, those are the only two people?**
 13 A Yes.
 14 **Q Now, why were you given permission by**
 15 **Lieutenant George to go home?**
 16 A I explained to him why I had to go
 17 there and he gave me permission to go there.
 18 **Q What was your explanation?**
 19 A I was taking care of my father.
 20 **Q And what was your father's condition**
 21 **that required that you provide care?**
 22 A My father has anxiety and depression
 23 issues.
 24 **Q Did you request leave, family leave, in**
 25 **order to take care of your father?**

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1 A I did not.
 2 **Q Why not?**
 3 A I don't know. I didn't think -- just
 4 didn't -- never occurred to me to even think
 5 about that.
 6 **Q Okay. So instead, you asked permission**
 7 **from Lieutenant George to take care of your**
 8 **father at home?**
 9 A Yes.
 10 **Q And how often did you go home to take**
 11 **care of your father while you were still on**
 12 **duty?**
 13 A Usually once during my shift.
 14 **Q For how long?**
 15 A Varied.
 16 **Q As little as half an hour?**
 17 A Less than that.
 18 **Q Up to?**
 19 A Make sure he's getting something to
 20 eat, something to drink, and then I would
 21 leave.
 22 **Q Okay. Would you stay longer than an**
 23 **hour?**
 24 A At times I believe I did, yes.
 25 **Q And is your father still alive?**

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1 A He is.
 2 **Q What's his name?**
 3 A Herman Graziolli.
 4 **Q Where does he live?**
 5 A He lives in Brook Park.
 6 **Q And did he ever live with you?**
 7 A No.
 8 **Q So why did you have to go home to check**
 9 **on your father if he didn't live with you?**
 10 A Because he was at my house.
 11 **Q So he was at your house, but not living**
 12 **at your house?**
 13 A Correct.
 14 **Q He would go to your house during the**
 15 **day?**
 16 A Correct.
 17 **Q How did he get to your house?**
 18 A He would walk.
 19 **Q How close did he live to you?**
 20 A I would say at the time, five or six
 21 blocks away.
 22 **Q And he was able to walk by himself to**
 23 **your house?**
 24 A Yes.
 25 **Q And so it was anxiety and depression**

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1 **you say your father had that required you to**
 2 **check on him and provide care for him?**
 3 A Right.
 4 **Q And did he ever file a claim through**
 5 **Social Security or any other agency?**
 6 A No, I don't believe so.
 7 **Q And how old is your father?**
 8 A 75.
 9 **Q Is he seeing any doctors or healthcare**
 10 **providers to treat these conditions?**
 11 A To my knowledge, no.
 12 **Q Has he ever?**
 13 A I don't know.
 14 **Q I mean, it sounds like you were**
 15 **providing some care to him. Is that**
 16 **something you think you'd know if he was**
 17 **actually going to see a healthcare provider?**
 18 A Not necessarily.
 19 **Q And how much time would he spend at**
 20 **your house every day?**
 21 A That would vary as well. Could be
 22 there for moments to, you know, the entire
 23 day.
 24 **Q And did you document any of this**
 25 **information when you were --**

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1 A I did not.

2 **Q Did you explain any of this to the**
3 **committee or the group at the police**
4 **department that investigated the matter?**

5 A No.

6 **Q So this is the first time you're**
7 **telling anybody about this?**

8 A Yeah.

9 **Q And how long did this go on for? How**
10 **long were you going home to check on your**
11 **father while you were on duty?**

12 A A week or so, maybe a little bit longer
13 than a week.

14 **Q And why just the week?**

15 A Because he was feeling better and
16 wasn't coming by anymore.

17 **Q So he was just feeling bad for a week,**
18 **you checked on him and you happened to get**
19 **--**

20 A I don't know that he was -- I'm not
21 him. I can't say that he was just feeling
22 bad for a week. I'm talking about when he
23 was at my house.

24 **Q So he was only at your house for just a**
25 **one week period of time?**

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1 A Well, give or take days. You know, I'm
2 not saying it was seven days, seven days,
3 that's it.

4 **Q So give or take a week is --**

5 A Right.

6 **Q And it was during that time period that**
7 **you would come home to check on him?**

8 A Correct, yes.

9 **Q And you just happened to be caught by**
10 **Carl Monday as an investigative reporter?**

11 A Yes.

12 **Q Okay. All right. Let's talk about**
13 **your secondary employment, okay?**

14 A Okay.

15 **Q You answered an interrogatory that I**
16 **had sent to your lawyer and in response, you**
17 **told me that you've worked hundreds of**
18 **special duty assignments. Does that sound**
19 **right to you?**

20 A (Nodding).

21 **Q Yeah?**

22 A A lot of them, yes.

23 **Q And this has been over the past 27**
24 **years?**

25 A Yes.

1 **Q Do you recall when you first started**
2 **working secondary employment?**

3 A As soon as I could.

4 **Q Do you remember what year that was?**

5 A Probably 1992.

6 **Q And have you always worked secondary**
7 **employment since then?**

8 A Yes.

9 **Q And why is it that you work secondary**
10 **employment?**

11 A The money.

12 **Q What percentage of your income in a**
13 **given year is derived from secondary**
14 **employment?**

15 A I couldn't break it down that way. I
16 never -- never, you know, looked at it that
17 way.

18 **Q Where are some of the establishments or**
19 **companies for which you have worked**
20 **secondary employment?**

21 A I mean, I worked over between the Q and
22 the Progressive Field, I worked Tower City,
23 I worked all kinds of construction jobs,
24 standing over a hole, directing traffic. I
25 worked just about anything.

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1 **Q At any given week, how many hours would**
2 **you say you're working secondary**
3 **employment?**

4 A I would say upwards of 28, somewhere
5 around that time frame.

6 **Q Around 28 hours per week?**

7 A Yeah, somewhere around there, give or
8 take.

9 **Q And this is in addition to the 48 hours**
10 **you work regular duty?**

11 A Yes.

12 **Q Let me just talk a little bit about**
13 **your shift or your work schedule as a police**
14 **officer. Have you had a regular schedule**
15 **over the years as a police officer?**

16 A It's not regular. It's -- from 1992 to
17 '94, we rotated shifts, so every 30 days,
18 they would switch.

19 **Q And then going forward after 1994?**

20 A They were specific to day shift,
21 afternoon shift or night shift, and I've
22 been on all of them.

23 **Q And so as of, say, January of 2018,**
24 **about a year ago, what was your --**

25 A Day shift.

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1 **Q Day shift. And what are the hours?**
 2 A Again, it would vary. They start
 3 either at 6:00 a.m., 7:00 a.m. or 8:00 a.m.
 4 and go for eight hours, but could extend, of
 5 course, as well to overtime.
 6 **Q And how many days a week?**
 7 A Generally six days a week.
 8 **Q Is that the norm for the Cleveland**
 9 **Police Department or that --**
 10 A Your days off rotate. There's -- like
 11 one week you would be off Monday and
 12 Tuesday, the following week, you would be
 13 off Tuesday and Wednesday. That's my
 14 shift.
 15 **Q And on average, it's six days a week?**
 16 A Yes.
 17 **Q Okay. All right. Let go back to your**
 18 **secondary employment. Who typically pays**
 19 **you for the secondary employment**
 20 **assignments, the private employer?**
 21 A Yes, yes, yes.
 22 **Q Does it go through the city in any way?**
 23 A Does not.
 24 **Q How are you typically paid? Cash,**
 25 **check, direct deposit, what?**

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1 A Both, all of those.
 2 **Q All of those. It depends?**
 3 A Depends.
 4 **Q And have you ever been issued a 1099?**
 5 A Yes.
 6 **Q Okay. A W-2?**
 7 A Yes.
 8 **Q Okay. Did The Corner Alley issue a W-2**
 9 **or a 1099?**
 10 A No, neither.
 11 **Q Neither. And how did The Corner Alley**
 12 **pay you?**
 13 A Cash.
 14 **Q Did you report your income from the**
 15 **secondary employment jobs to the taxing**
 16 **authorities?**
 17 A Yes.
 18 **Q All the time?**
 19 A Yes.
 20 **Q And on your tax returns, do you declare**
 21 **yourself an employee when you work secondary**
 22 **employment or independent contractor?**
 23 A I'm not sure how the tax guy, you know,
 24 approaches that.
 25 **Q Who's your tax guy?**

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1 A I go to -- I've had family friends do
 2 it, and I think that's the last few years
 3 I've had somebody just with some tax
 4 experience -- well, I don't know if it's tax
 5 experience, but...
 6 **Q Someone to help you with your tax**
 7 **returns?**
 8 A Yeah.
 9 **Q You filed tax returns for 2017 I take**
 10 **it?**
 11 A I did, yes.
 12 **Q Did you have anybody help you?**
 13 A I had it done, yes.
 14 **Q Who did it for you?**
 15 A Ta-Check. Ta-Check.
 16 **Q Can you spell that for me?**
 17 A T-A Check, C-H-E-C-K.
 18 **Q And that's a company?**
 19 A Yes.
 20 **Q Where are they located?**
 21 A Pearl Road in Parma, I believe.
 22 **Q Is there a person or an individual**
 23 **there that you worked with?**
 24 A Yes. Don Lambo.
 25 **Q Don Lambo, L-A-M-B-O?**

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1 A Yes.
 2 **Q He prepared your 2017 tax return?**
 3 A Yes.
 4 **Q And did he -- what about the year**
 5 **before, 2016?**
 6 A I believe so, yes. I believe so.
 7 **Q The year before that, 2015?**
 8 A Yes, I think so, yes.
 9 **Q Okay. How far back do you think he**
 10 **helped you with your tax returns?**
 11 A Not much past that, I don't think so.
 12 **Q Okay. With the cash jobs, how do you**
 13 **report your income?**
 14 A I would just tell him how much I made
 15 and then he would put it on the forms,
 16 however it's put on there. I don't know.
 17 **Q And did you keep any documentation when**
 18 **you got cash payment about how much you**
 19 **received and the hours you worked?**
 20 A No.
 21 **Q How would you know how much to report**
 22 **to Don Lambo?**
 23 A Just in my mind, I would keep track of
 24 it.
 25 **Q You would just keep a memory of how**

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1 **much --**
 2 A It wasn't -- it wasn't like, you know,
 3 a great number.
 4 **Q Did the Cleveland Police Department**
 5 **ever provide you training on being a private**
 6 **security guard?**
 7 A No, not that I can recall, no.
 8 **Q Have you ever gotten formal training on**
 9 **being a private security guard?**
 10 A No.
 11 **Q Have you ever read any materials to**
 12 **educate yourself on being a private security**
 13 **guard?**
 14 A No.
 15 **Q In your interrogatory answers, you**
 16 **used the phrase "special duty" to talk about**
 17 **your secondary employment. For example,**
 18 **you've had hundreds of special duty**
 19 **assignments. Is that a terminology that you**
 20 **use when describing secondary employment?**
 21 A We call it part-time.
 22 **Q Part-time. Does the phrase "special**
 23 **duty" have any meaning to you as a police**
 24 **officer?**
 25 A Ours is part-time. That's the word we

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1 use for it, part-time.
 2 **Q Part-time. Do you know what**
 3 **terminology the police department uses?**
 4 A I don't believe they use any, other
 5 than secondary employment. That's what they
 6 would use, sorry.
 7 **Q Secondary employment.**
 8 A That's what they would use.
 9 **Q How do you typically find out about the**
 10 **secondary employment job opportunities?**
 11 A That could vary. Word of mouth, could
 12 be posted.
 13 **Q Posted where?**
 14 A In the buildings.
 15 **Q The police buildings?**
 16 A Yes.
 17 **Q Where would it be posted, on a bulletin**
 18 **board?**
 19 A Could be anywhere.
 20 **Q So it could be posted on a bulletin**
 21 **board?**
 22 A Could be, could be anywhere. Could be
 23 in a roll call room, could be in a roll call
 24 folder. It could be anywhere, honestly.
 25 **Q Electronically, do you ever see any**

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1 **electronic --**
 2 A No, I've never seen it electronically.
 3 **Q So any postings would be somewhere**
 4 **inside of the police district headquarters?**
 5 A That would be where most of it is or
 6 it's word of mouth.
 7 **Q What about The Corner Alley job, how**
 8 **did you find out about that?**
 9 A From Lieutenant Zarlenga.
 10 **Q Zarlenga?**
 11 A Yeah.
 12 **Q Was there a job posting about The**
 13 **Corner Alley job?**
 14 A No.
 15 **Q Did Lieutenant Zarlenga ever work**
 16 **secondary employment for The Corner Alley?**
 17 A I don't know. I have no idea.
 18 **Q You don't know how he found out about**
 19 **the job, he just told you about it?**
 20 A Right.
 21 **Q And what did he explain the job**
 22 **involved?**
 23 A It's part-time.
 24 **Q Anything more than that?**
 25 A No.

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1 **Q Okay. Let talk a little bit more**
 2 **specifically about your employment**
 3 **arrangement with The Corner Alley. You told**
 4 **me how you found out about the job is**
 5 **through this lieutenant.**
 6 **Did you have to submit any kind of**
 7 **written application to The Corner Alley to**
 8 **apply for the job?**
 9 A No.
 10 **Q How did you apply for the job?**
 11 A I didn't apply for it. I was given the
 12 opportunity from the lieutenant to work it
 13 and I worked it.
 14 **Q So he was your point person for The**
 15 **Corner Alley?**
 16 A He told me about it, yeah.
 17 **Q Okay. So he told you about it and then**
 18 **did you reach out to The Corner Alley?**
 19 A No.
 20 **Q They reached out to you?**
 21 A No.
 22 **Q How'd you get the job?**
 23 A Through the lieutenant.
 24 **Q I don't understand that. Was he an**
 25 **employee of Corner Alley?**

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1 A I don't know his arrangement with them
2 at all.

3 **Q Okay.**

4 A He said, "I got this part-time, you
5 interested in working it?"

6 I said, "I'm available on these dates
7 and times."

8 "There you go."

9 **Q I see. And so he told you what -- he
10 told you when to show up?**

11 A Yes.

12 **Q Did you ever deal with any employee of
13 The Corner Alley in terms of scheduling?**

14 A No.

15 **Q And who paid you, the lieutenant?**

16 A The lieutenant.

17 **Q How often would he pay you? Daily,
18 weekly, monthly?**

19 A It varied. Whenever I would see him.

20 **Q How would he know how many hours you
21 worked?**

22 A Based off of the days that he gave you
23 -- gave me.

24 **Q I see. And how often would he give you
25 the work schedule?**

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1 A I did the schedule for that -- for the
2 east side location.

3 **Q Okay. You created the work schedule?**

4 A I did, yes. I had officers.

5 **Q You what?**

6 A I had officers working it.

7 **Q You had officers working what?**

8 A Corner Alley.

9 **Q Okay. What other officers worked at
10 that Corner Alley location?**

11 A Let me think who worked it for me.

12 They were newer guys. I don't really -- I
13 don't really remember.

14 You got to understand, it's you walk up
15 to somebody, say, "I got some part-time, you
16 want to work it," and that's how it's
17 filled.

18 **Q Very informal it sounds like?**

19 A Exactly.

20 **Q But how would you know what days and
21 what hours you would be reporting to The
22 Corner Alley?**

23 A It was only two days, it was Thursdays
24 and Saturdays.

25 **Q I see. From when you started there at**

1 **Corner Alley, it was always Thursdays and
2 Saturdays?**

3 A I want to say that when we started,
4 when I started, when we started, it was only
5 Thursdays. I believe Saturdays were added.

6 **Q Was it always just one officer working
7 at this Corner Alley location at one time?**

8 A On Thursdays, there would be two.
9 Saturdays, when Saturdays became part of it,
10 it was one.

11 **Q One officer. And I take it you did
12 work some Thursdays at The Corner Alley?**

13 A I only worked there Thursdays.

14 **Q You did work there on Thursdays?**

15 A On Thursdays.

16 **Q Who did you work there with?**

17 A That would vary again.

18 **Q Okay.**

19 A There would be times when somebody
20 couldn't do it, I'd have to just do it
21 myself.

22 **Q So at no point did you work with The
23 Corner Alley employees to arrange your
24 schedule, you did all this through the
25 lieutenant?**

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1 A Right.

2 **Q And in collaboration with these patrol
3 officers that you would work with as well,
4 right?**

5 A Right, yeah.

6 **Q And who paid the patrol officers, you
7 or the lieutenant?**

8 A He would give me the money and then I
9 would give it to...

10 **Q And who would pay this lieutenant?**

11 A I have no idea.

12 **Q What did you tell me his name is?**

13 A Zarlenga.

14 **Q What is it?**

15 A Zarlenga.

16 **Q Zarlenga. And which district is he in?**

17 A He's not. He's the FOP vice president.

18 **Q Oh, that's right. You told me about
19 him already.**

20 **You don't know who he received the
21 money from?**

22 A I do not, no.

23 **Q Do you know if he was taking a cut of
24 your pay?**

25 A I do not know that.

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1 **Q Is that typically how these secondary**
 2 **jobs work, that a lieutenant would be**
 3 **responsible --**
 4 A No, any -- there's -- I mean, rank is
 5 nothing. Could be anybody.
 6 **Q But would it be an officer that would**
 7 **pay the other officers working the part-time**
 8 **employment?**
 9 A Not necessarily. A lot of times you
 10 could get paid directly, too.
 11 **Q And on those occasions when you would**
 12 **be responsible for paying the other**
 13 **officers, did you take a cut of their pay?**
 14 A No.
 15 **Q And how did you keep track of the money**
 16 **to make sure to document that the amount of**
 17 **money you're receiving is the same amount of**
 18 **money you were giving to the patrol**
 19 **officers?**
 20 A Well, I would know that --- what I was
 21 supposed to pay them and what I received and
 22 that's what I would pay them because I would
 23 be receive -- I would be receiving that
 24 specific amount.
 25 **Q From the lieutenant?**

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1 A Yes.
 2 **Q And then you would dole out as**
 3 **appropriate to the different officers?**
 4 A Right.
 5 **Q But you didn't make any documentation**
 6 **about who you paid and how much?**
 7 A No.
 8 **Q And what were your duties and**
 9 **responsibilities while working security at**
 10 **The Corner Alley?**
 11 A I wasn't given any specifically.
 12 **Q Did you ask?**
 13 A No.
 14 **Q Did you ask The Corner Alley or any of**
 15 **its employees, "What do you want me to do**
 16 **here?"**
 17 A No.
 18 **Q Were you given any limitations on what**
 19 **you were allowed to do?**
 20 A I wasn't -- no, I wasn't given
 21 anything.
 22 **Q You worked at The Corner Alley Uptown.**
 23 **Did you ever work at the other Corner Alley**
 24 **location?**
 25 A No, I don't believe I ever worked down

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1 there.
 2 **Q Have you ever worked at a bowling alley**
 3 **before?**
 4 A No.
 5 **Q What about a bowling alley with a bar**
 6 **inside?**
 7 A No.
 8 **Q What about a bowling alley with a bar**
 9 **and an arcade?**
 10 A No.
 11 **Q So who determined what your duties and**
 12 **responsibilities were at The Corner Alley,**
 13 **just you?**
 14 A Yes.
 15 **Q Okay. And what in your mind were your**
 16 **duties and responsibilities?**
 17 A Presence.
 18 **Q Did you have any responsibilities to**
 19 **patrol the area, patrol the premises?**
 20 A I didn't.
 21 **Q Just to be a physical presence?**
 22 A Right.
 23 **Q And beyond that, you didn't have any**
 24 **other responsibilities?**
 25 A Right.

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1 **Q Did anyone at Corner Alley ever talk to**
 2 **you about why they wanted to hire a police**
 3 **officer?**
 4 A No.
 5 **Q Did you ever ask them?**
 6 A No.
 7 **Q Did you ever interact with any Corner**
 8 **Alley employee?**
 9 A Just in, you know, hello, how are you,
 10 the weather, order some food. I ordered
 11 food.
 12 **Q Can you recall any Corner Alley**
 13 **employees' names?**
 14 A No.
 15 **Q Did you ever know their names?**
 16 A No.
 17 **Q I think you did tell me that you got**
 18 **written permission to work this second job?**
 19 A I did, yes.
 20 **Q And did the police department know the**
 21 **manner in which you were being paid?**
 22 MR. PIKE: Objection.
 23 Form.
 24 A I don't know.
 25 **Q Is that something that you told them?**

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<p>1 MR. PIKE: Same</p> <p>2 objection.</p> <p>3 A No.</p> <p>4 Q Did they ever ask?</p> <p>5 A No.</p> <p>6 Q Is that something that you have to</p> <p>7 report to them, the manner in which you're</p> <p>8 being paid at that secondary employment?</p> <p>9 A No.</p> <p>10 Q And you were approved by the police</p> <p>11 department to carry your firearm while</p> <p>12 working this job?</p> <p>13 MR. PIKE: Objection.</p> <p>14 Form.</p> <p>15 A Yes.</p> <p>16 Q And to wear your police uniform, right?</p> <p>17 You had permission to do that?</p> <p>18 A Yes.</p> <p>19 Q And you had permission to carry your</p> <p>20 intermediate weapons that we talked about</p> <p>21 before?</p> <p>22 A Yes.</p> <p>23 Q Did the police department impose any</p> <p>24 restrictions on what you could do at The</p> <p>25 Corner Alley that you're aware of?</p>	<p>1 A I don't know.</p> <p>2 Q Did you ever ask to see them?</p> <p>3 A No.</p> <p>4 Q Were you ever given a layout, a</p> <p>5 document showing the layout of The Corner</p> <p>6 Alley premises?</p> <p>7 A No.</p> <p>8 Q Can you tell me what the capacity was</p> <p>9 at The Corner Alley Uptown?</p> <p>10 A I cannot, I couldn't tell you at all.</p> <p>11 Q You were never told that information by</p> <p>12 The Corner Alley?</p> <p>13 A Right.</p> <p>14 Q You didn't ask it either?</p> <p>15 A No.</p> <p>16 Q Were you ever told what the alcohol</p> <p>17 sales were on Saturdays?</p> <p>18 A Sales? What do you mean?</p> <p>19 Q Alcohol sales, the amount of beverages,</p> <p>20 alcoholic beverages that were sold at The</p> <p>21 Corner Alley.</p> <p>22 A Like dollar-wise?</p> <p>23 Q Dollar-wise or --</p> <p>24 A No, no, no.</p> <p>25 Q You never were provided that</p>
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<p>1 A No.</p> <p>2 Q Did they restrict your work with</p> <p>3 respect to the bar area at The Corner</p> <p>4 Alley?</p> <p>5 A No.</p> <p>6 Q Was there a written agreement or</p> <p>7 contract between you and The Corner Alley?</p> <p>8 A No.</p> <p>9 Q Did you ever get any training documents</p> <p>10 from The Corner Alley?</p> <p>11 A No.</p> <p>12 Q Any handbooks?</p> <p>13 A No.</p> <p>14 Q Guidelines?</p> <p>15 A No.</p> <p>16 Q Memos?</p> <p>17 A No.</p> <p>18 Q Pamphlets?</p> <p>19 A No.</p> <p>20 Q Policies?</p> <p>21 A No.</p> <p>22 Q Employee manual?</p> <p>23 A No.</p> <p>24 Q Do you know if any such documents</p> <p>25 existed at The Corner Alley?</p>	<p>1 information?</p> <p>2 A No.</p> <p>3 Q On Thursdays or Saturdays?</p> <p>4 A No dates.</p> <p>5 Q Okay. Well, was more or less alcohol</p> <p>6 sold on Saturdays compared with Thursdays?</p> <p>7 A I have no idea.</p> <p>8 Q What about the number of patrons,</p> <p>9 Thursdays compared with Saturdays?</p> <p>10 A Again, no idea.</p> <p>11 Q Were you aware if there had been any</p> <p>12 fights ever at The Corner Alley?</p> <p>13 A To my knowledge, I'm not aware of any,</p> <p>14 no.</p> <p>15 Q Any medical incidents at The --</p> <p>16 A Again, not aware of any.</p> <p>17 Q Okay. Any disturbance at The Corner</p> <p>18 Alley that resulted in the police being</p> <p>19 called?</p> <p>20 A To my knowledge, I don't know.</p> <p>21 Q Did you have any responsibility to</p> <p>22 check IDs of people coming into the bar?</p> <p>23 A I did not.</p> <p>24 Q Did anybody that you were aware of, did</p> <p>25 anybody check IDs at The Corner Alley?</p>

1 A I didn't, I don't -- I didn't, no.
 2 **Q But you didn't see anybody else doing**
 3 **that?**
 4 A No.
 5 **Q Was there ever a bouncer at the front**
 6 **door?**
 7 A No.
 8 **Q Did you ever see anybody get kicked out**
 9 **of The Corner Alley before the incident on**
 10 **January 13th, 2018?**
 11 A No.
 12 **Q Did you observe any fights?**
 13 A No.
 14 **Q Did The Corner Alley ask you to carry**
 15 **your firearm while working?**
 16 A No.
 17 **Q Presumably you were -- because you were**
 18 **a presence there, it was clear to the**
 19 **patrons that you were carrying a firearm; is**
 20 **that fair to say?**
 21 A I can't -- I can't say what they would
 22 interpret.
 23 **Q Sure. Let me ask it this way: Were**
 24 **you concealing the fact that you were**
 25 **carrying a firearm while working at The**

1 **Corner Alley?**
 2 A No.
 3 **Q So it was visible?**
 4 A My coat would have been -- probably
 5 would have been covering it.
 6 **Q Okay. Did you wear your coat the**
 7 **entire time working at The Corner Alley when**
 8 **you were inside?**
 9 A That night?
 10 **Q Just in general.**
 11 A Depended on the weather.
 12 **Q Okay. And you did carry your weapon**
 13 **every time you worked at The Corner Alley?**
 14 A Yes.
 15 **Q Did The Corner Alley employees ever**
 16 **object to you having a firearm?**
 17 A No.
 18 **Q Were you aware that this was a**
 19 **no-firearm establishment?**
 20 A No.
 21 **Q Okay. You didn't see that big sticker**
 22 **on the front door?**
 23 A I did not.
 24 **Q Did you ever see anybody else carrying**
 25 **a firearm inside The Corner Alley?**

1 A I did not.
 2 **Q Did you ever discuss with The Corner**
 3 **Alley the circumstances under which you**
 4 **would use your gun if necessary?**
 5 A No.
 6 **Q Were you given -- were you provided any**
 7 **restrictions on when or how you could use**
 8 **your firearm while working at The Corner**
 9 **Alley?**
 10 A No.
 11 **Q If I'm understanding correctly, you**
 12 **never underwent any kind of interview**
 13 **process --**
 14 A Correct.
 15 **Q -- to get the job at The Corner Alley?**
 16 A That's correct.
 17 **Q You didn't submit any documentation to**
 18 **The Corner Alley?**
 19 A No.
 20 **Q You didn't submit your personnel file?**
 21 A No.
 22 **Q Do you know if they performed a**
 23 **background check on you?**
 24 A I do not know.
 25 **Q Did anybody at The Corner Alley tell**

1 **you that they were going to do a background**
 2 **check?**
 3 A No.
 4 **Q How soon after you learned about the**
 5 **job from the lieutenant did you work your**
 6 **first shift at The Corner Alley?**
 7 A It would have been relatively soon.
 8 **Q Like the same day or within days?**
 9 A Within days I would say.
 10 **Q Okay. If you were sick and couldn't**
 11 **work The Corner Alley, who would you**
 12 **notify?**
 13 A The lieutenant.
 14 **Q Lieutenant. And you don't know who he**
 15 **would in turn notify?**
 16 A No, exactly.
 17 **Q Do you know the total number of hours**
 18 **you worked at The Corner Alley in 2017?**
 19 A I do not.
 20 **Q You never made any documentation?**
 21 A No.
 22 **Q Was that something you typically did as**
 23 **-- when you worked secondary employment, you**
 24 **would make documentation of the hours**
 25 **worked?**

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1 A No.
 2 **Q Not something you kept track of?**
 3 A No.
 4 **Q You were not issued a W-2 or a 1099 by**
 5 **The Corner Alley?**
 6 A I was not.
 7 **Q When you got to The Corner Alley, did**
 8 **you have to report to somebody, say, "I'm**
 9 **here"?**
 10 A No.
 11 **Q What was your typical Thursday shift?**
 12 A I believe 9:00 p.m. to 1:00, 1:00 a.m.
 13 **Q And was that when the establishment**
 14 **closed, 1:00 a.m.?**
 15 A I don't know if they closed or not that
 16 early.
 17 **Q And what about Saturdays, the same,**
 18 **9:00 to 1:00; your shift I mean?**
 19 A Yes; I think so, yes.
 20 **Q Did those hours ever change or was your**
 21 **shift always 9:00 to 1:00?**
 22 A I think it was 9:00 to 1:00.
 23 **Q And when was the last date you were**
 24 **working secondary employment at The Corner**
 25 **Alley, January 13th, 2018?**

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1 A That's the last day.
 2 **Q Okay. And why was that your last day?**
 3 **Were you fired by The Corner Alley?**
 4 MR. ROCHE: Objection. Go
 5 ahead.
 6 A No, not to my knowledge.
 7 **Q So how did you know that you were not**
 8 **going to be working there anymore?**
 9 A Since the incident, I'm on restricted
 10 duty.
 11 **Q Even to this day, you're still on**
 12 **restricted duty?**
 13 A I am.
 14 **Q And that's the reason you no longer**
 15 **worked at The Corner Alley, because you were**
 16 **on restricted duty?**
 17 A Yes.
 18 **Q You were not told by The Corner Alley**
 19 **that we didn't want you to come back?**
 20 A I was not.
 21 **Q Did you have a conversation with this**
 22 **Lieutenant Zarlenga that you wouldn't be**
 23 **working at The Corner Alley anymore?**
 24 A No.
 25 **Q You just assumed that he would find out**

1 **and report it back to The Corner Alley that**
 2 **you were not available to work anymore?**
 3 A I can't -- I don't know what he -- what
 4 he would do or what he has done.
 5 **Q Okay. So you don't know one way or the**
 6 **other and you didn't do anything to notify**
 7 **The Corner Alley?**
 8 A Right.
 9 **Q You just -- okay. All right. Tell me**
 10 **about this restricted duty. Why are you on**
 11 **restricted duty?**
 12 A Because of the ongoing investigation.
 13 **Q And what are you allowed to do while**
 14 **you're on restricted duty?**
 15 A Administrative duties.
 16 **Q And what does that mean? What are you**
 17 **doing on a day-to-day basis?**
 18 A It varies. Whatever my lieutenant
 19 would give me administratively, that's what
 20 I do.
 21 **Q Who is your lieutenant?**
 22 A James Plent.
 23 **Q Plent?**
 24 A Plent, yes.
 25 **Q Despite being on restricted duty, do**

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1 **you still maintain your normal hours?**
 2 A Yes.
 3 **Q About 48 hours a week?**
 4 A I'm on Monday through Friday now, so 40
 5 hours a week.
 6 **Q And you're paid?**
 7 A I am.
 8 **Q And you've been paid consistently since**
 9 **this incident?**
 10 A Yes.
 11 **Q Have you worked any secondary**
 12 **employment since the incident?**
 13 A I have not.
 14 **Q Do you know when you're going to be --**
 15 **return back to normal duties?**
 16 MR. PIKE: Objection.
 17 Form.
 18 A I do not know.
 19 **Q Have you received any documentation**
 20 **related to your restricted duty?**
 21 A No.
 22 **Q So how did you find out you were on**
 23 **restricted duty?**
 24 A I was told.
 25 **Q By your lieutenant or by somebody**

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1 else?

2 A Oh, boy. I'm trying to think here. I

3 want to say I was told by the homicide unit.

4 **Q Who in the homicide unit?**

5 A It would have been Lieutenant Pillow.

6 **Q Lieutenant Pillow?**

7 A Pillow, yeah.

8 **Q How do you spell it? How do you spell**

9 **Pillow?**

10 A P-I-L-L-O-W, Pillow. I believe that's

11 who told me, but somebody in that -- in that

12 chain right there.

13 **Q Have you had a conversation with this**

14 **lieutenant about the incident?**

15 A I have not.

16 **Q Are you normally working in the**

17 **homicide unit?**

18 A No. He's the officer in charge of it.

19 **Q Okay. Is there a unit that you're**

20 **assigned to?**

21 A I'm assigned to District Five.

22 **Q Just District Five?**

23 A Oh, you know, I apologize. I'm

24 assigned to the employees assistance unit.

25 **Q And what is that?**

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1 A That's the unit that helps officers

2 involved in critical incidents.

3 **Q Give me an example of what a critical**

4 **incident might be.**

5 A Use of deadly force incident.

6 **Q So any time there's an officer involved**

7 **in the use of deadly force, it's your unit**

8 **that goes to the scene, somebody from your**

9 **unit?**

10 A I don't know their protocol, if they

11 respond to the scene. I know that they

12 address the officer afterwards.

13 **Q And what is your role within that**

14 **unit?**

15 A That's just where I'm assigned.

16 **Q Okay. Is it just a title or does it**

17 **actually mean anything?**

18 A It's just where I'm assigned while the

19 investigation is going -- ongoing.

20 **Q Oh, I understand. While you're on**

21 **restricted duty, that's the unit you're**

22 **assigned to?**

23 A Right.

24 **Q I see. Before you were on restricted**

25 **duty, before the incident, were you assigned**

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1 **to any particular unit?**

2 A Just District Five.

3 **Q I understand. All right. Let's turn**

4 **back to The Corner Alley. Were you aware of**

5 **the layout of The Corner Alley when you were**

6 **working there?**

7 A Yes.

8 **Q Okay. Can you describe the second**

9 **floor for me?**

10 A Only thing that I know about the second

11 floor is there's a bathroom up there.

12 **Q Did you ever go up to the second floor**

13 **while working there?**

14 A No.

15 **Q You always just stayed on the first**

16 **floor?**

17 A Yes.

18 **Q And were you responsible for monitoring**

19 **either the front or the back entrance?**

20 A Was I assigned to monitor the front or

21 back entrance, that's the question?

22 **Q Correct.**

23 A No.

24 **Q Who was monitoring the front and the**

25 **back entrance while you were working there?**

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1 MR. ROCHE: Objection.

2 A I don't believe anyone.

3 **Q Were both the front and the back opened**

4 **while you were working there? I mean,**

5 **unlocked, opened while you were working**

6 **there on Thursdays?**

7 A Yes.

8 **Q And Saturdays?**

9 A Yes.

10 **Q Were you aware of where the**

11 **surveillance cameras were located throughout**

12 **the establishment?**

13 A Not at all, no.

14 **Q Were you ever told by The Corner Alley**

15 **or anybody working for The Corner Alley**

16 **where the different cameras were located?**

17 A No.

18 **Q Did you ever ask?**

19 A No.

20 **Q Did you know where the room was where**

21 **the monitors for the surveillance videos**

22 **were located?**

23 A No.

24 **Q Did you know if it was on the first**

25 **floor or the second floor?**

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1 A No, no idea.
 2 **Q Did you know where the manager's office**
 3 **was located at this --**
 4 A No.
 5 **Q Okay. Do you know what square footage**
 6 **of The Corner Alley establishment was?**
 7 A No, not at all.
 8 **Q Do you know how many bars were inside**
 9 **the premises?**
 10 A No.
 11 **Q This was an establishment open to**
 12 **adults and children?**
 13 A I don't know.
 14 **Q Okay. Do you recall seeing children**
 15 **there ever?**
 16 A Not that I can remember, no.
 17 **Q Did you pay attention to that one way**
 18 **or the other, whether there were children at**
 19 **the establishment?**
 20 A I never specifically looked for kids or
 21 did not look for them.
 22 **Q Okay. Not something that was within**
 23 **your purview providing security at The**
 24 **Corner Alley?**
 25 A It's not something that I did.

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1 **Q The night of the incident, January**
 2 **13th, 2018, how many employees were working**
 3 **at The Corner Alley?**
 4 A I have no idea.
 5 **Q Who was part of the security team at**
 6 **The Corner Alley that night?**
 7 A I guess it would just be me.
 8 **Q And what was the security plan that**
 9 **night?**
 10 A Presence.
 11 **Q Anything else?**
 12 A No.
 13 **Q Did you have a meeting with anyone else**
 14 **to discuss the security plan?**
 15 A No.
 16 **Q Did Corner Alley ever hire a security**
 17 **company to assist you at this job site?**
 18 A I never talked with any security
 19 company.
 20 **Q Did you ever check for weapons while**
 21 **working security at The Corner Alley?**
 22 A Check?
 23 **Q Check patrons for weapons?**
 24 A No.
 25 **Q Did you see anybody checking for**

1 **weapons?**
 2 A No.
 3 **Q At any point?**
 4 A I did not, no.
 5 **Q On any day that you worked?**
 6 A I did not, no.
 7 **Q Was any Corner Alley staff trained in**
 8 **first aid?**
 9 A I have no idea.
 10 **Q You have no idea. Did anybody tell you**
 11 **whether they were one way or the other?**
 12 A No.
 13 **Q Do you know if The Corner Alley had**
 14 **first aid supplies on hand?**
 15 A I have no idea.
 16 **Q And so who was responsible at The**
 17 **Corner Alley for determining when the first**
 18 **aid kit would be used?**
 19 A I have no idea.
 20 **Q Did The Corner Alley have an emergency**
 21 **plan in place the night of the shooting?**
 22 A I have no idea.
 23 **Q Evacuation plan?**
 24 A Again, no idea.
 25 **Q Did The Corner Alley ever issue you a**

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1 **handheld radio?**
 2 A No.
 3 **Q Were you carrying a radio?**
 4 A I was not.
 5 **Q Did you have a plan to stay in one**
 6 **location while you were working at The**
 7 **Corner Alley or you just moved around**
 8 **throughout the night?**
 9 A I don't recall moving around too much,
 10 but I also don't -- saying I'm going to stay
 11 here, right here. You move around. It's
 12 just, you know...
 13 **Q You didn't have a plan one way or the**
 14 **other?**
 15 A No.
 16 **Q When was the last time you were working**
 17 **on duty as a police officer prior to coming**
 18 **to The Corner Alley that night?**
 19 A I believe it was that day, during the
 20 day.
 21 **Q What were your hours that day?**
 22 A I believe they were 6:00 to 2:00, 6:00
 23 a.m. to 2:00 p.m.
 24 **Q And where did you spend most of that**
 25 **day at work? Were you at the district**

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1 **headquarters or were you on patrol?**
 2 A I don't recall.
 3 **Q Is that something that would be**
 4 **documented?**
 5 A It would be on my duty report.
 6 **Q And what about earlier in the week, did**
 7 **you work a full week?**
 8 A I believe so, yeah.
 9 **Q Did you work Monday through Saturday?**
 10 A I don't know what dates -- what days I
 11 would have worked, what days I would have
 12 been off.
 13 **Q But if we got your duty reports from**
 14 **that week, it would reflect your hours?**
 15 A It would reflect the dates and times I
 16 worked, yes.
 17 **Q Got it. Did you work that Thursday**
 18 **before the incident at Corner Alley?**
 19 A Again, I don't remember if I was off on
 20 those days. Could have been working
 21 overtime. I can't really specifically
 22 remember and I haven't looked at anything to
 23 say I was working that day.
 24 **Q Were you working any other secondary**
 25 **employment anywhere else during this time**

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1 **frame?**
 2 A No.
 3 **Q So in January of 2018, Corner Alley was**
 4 **your only other secondary job?**
 5 A Yes.
 6 **Q So you got off duty around 2:00 p.m.**
 7 **that Saturday and where did you go? Where**
 8 **was the first place you went after work?**
 9 A I would have went home.
 10 **Q And when you got home, what'd you do?**
 11 A I remember, you know, sleeping at some
 12 point.
 13 **Q What time did you get up?**
 14 A Have no idea.
 15 **Q What'd you do once you got up?**
 16 A Probably took a shower and get ready to
 17 go back to work.
 18 **Q At The Corner Alley?**
 19 A Right.
 20 **Q Did you have anything to eat?**
 21 A I don't remember.
 22 **Q Was anybody with you at your house?**
 23 A No.
 24 **Q Did you see anybody in between**
 25 **finishing your work at the police department**

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1 **and starting your job that night at The**
 2 **Corner Alley?**
 3 A No, because I would have been home.
 4 Nobody's there.
 5 **Q Did you consume any alcohol that day?**
 6 A No.
 7 **Q At any point during that day?**
 8 A Absolutely no.
 9 **Q When you got to The Corner Alley, did**
 10 **you report to anybody?**
 11 A Did not.
 12 **Q Did anybody report to you?**
 13 A No.
 14 **Q Was anybody supervising you?**
 15 A No.
 16 **Q Did you supervise anyone?**
 17 A No.
 18 **Q You told me your shift started around**
 19 **9:00 p.m. that night. Do you know what time**
 20 **you actually arrived there?**
 21 A I want to say it was quarter, quarter
 22 after, 20 after, something like that.
 23 **Q How did you get there, by car?**
 24 A Yes.
 25 **Q Was it a police car you drove in?**

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1 A No.
 2 **Q Where'd you park?**
 3 A The rear of the building.
 4 **Q What was the weather like that night,**
 5 **pretty cold?**
 6 A Terrible. Terrible outside.
 7 **Q Below freezing?**
 8 A I don't know.
 9 **Q But a typical terrible --**
 10 A It was cold.
 11 **Q -- Cleveland winter?**
 12 A It was cold.
 13 **Q Okay. Snow on the ground?**
 14 A A lot of snow and ice.
 15 **Q So since you didn't report to anybody,**
 16 **was there any way for The Corner Alley to**
 17 **know when you got there?**
 18 A They would see me.
 19 **Q The other employees would see you?**
 20 A Yeah.
 21 MR. ROCHE: Objection.
 22 Pardon me. I'm going to put on one
 23 continuing objection, too, just
 24 acknowledging the fact that there's
 25 a legal issue regarding his status,

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1 his employment relationship. With
2 that, go ahead please.
3 Oh, also while we're taking a
4 moment, we should have a
5 conversation about any time
6 constraints today. We're after four
7 o'clock. You guys can certainly go
8 as long as you need to, but
9 everybody else has some questions.
10 I don't know if the officer has any
11 time restrictions. We should at
12 least talk about it and we can do
13 that off the record, whatever you
14 guys want.
15 MR. TOR: Sure.
16 What was my last question?
17 ---
18 (Record read.)
19 ---
20 MR. ROCHE: Pardon me,
21 Jeremy. I had a question about any
22 time issues.
23 MR. TOR: Yeah, no. We
24 can maybe discuss it during a break.
25 MR. ROCHE: Sure,

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1 absolutely.
2 BY MR. TOR:
3 **Q Do you know how many other -- how many**
4 **Corner Alley employees there were at this --**
5 **A I do not.**
6 **Q Do you know who the manager was on**
7 **duty?**
8 **A I do not.**
9 **Q Do you know what the employees' job**
10 **responsibilities were, one way or the other?**
11 **A No.**
12 **Q All right. So tell me everything you**
13 **remember that you did before the first**
14 **incident which happened inside The Corner**
15 **Alley between Thomas and his friend. You**
16 **get there a little after 9:15. What do you**
17 **do?**
18 **A Got something to drink. I remember**
19 **asking if there was any ice and they said**
20 **there was no ice in the soda dispenser where**
21 **I was getting soda. I got Mountain Dew.**
22 **Then I walked to the front, close to the**
23 **alleys and I ordered some food with one of**
24 **the waitresses.**
25 **Q Do you remember what you ordered?**

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1 **A I do not. I want to say it was a -- it**
2 **was a -- maybe a chicken salad.**
3 **Q And were you able to finish it?**
4 **A I did eat, yes.**
5 **Q And so other than getting a Mountain**
6 **Dew, eating your dinner, what else did you**
7 **do before the first incident inside The**
8 **Corner Alley?**
9 **A Nothing. I was staying in there.**
10 **Q Did you go upstairs at any point?**
11 **A Hmm-mm.**
12 **Q No?**
13 **A Before the incident?**
14 **Q Correct.**
15 **A I did not, no.**
16 **Q All right. Do you recall about what**
17 **time the incident occurred inside the**
18 **establishment?**
19 **A I do not, no.**
20 **Q How did you learn about it?**
21 **A One of the employees informed me about**
22 **it.**
23 **Q What'd they tell you?**
24 **A Said there was a fight.**
25 **Q Did you witness the fight yourself?**

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1 **A I did not.**
2 **Q By the time you got to the location of**
3 **the fight, did you see anybody fighting?**
4 **A I did not.**
5 **Q What did you -- what did you see when**
6 **you got there?**
7 **A Saw the first kid getting walked out,**
8 **saw from going back to where the second kid**
9 **was, going upstairs because I think there**
10 **was personal belongings up there.**
11 **I went upstairs with them. There was**
12 **some conversation back and forth between the**
13 **employees and the individual and he I think**
14 **got a coat, I think it was, and they went**
15 **around him, walked down the stairs and**
16 **walked out the front door.**
17 **Q Did you hear what was said during the**
18 **conversation between this individual and the**
19 **employees?**
20 **A I do not recall what was said at all.**
21 **Q And this individual, was that Thomas**
22 **Yatsko?**
23 **A Upstairs?**
24 **Q Yeah.**
25 **A Yes.**

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Q Okay. And the other individual who was first walked out of the establishment, that was his friend Deleon?

A Yes.

Q Okay. Did you have a conversation with Thomas at any point during this time period when he's going upstairs to get his jacket?

A No, I did not.

Q Did you ever have a conversation with Thomas inside the bar?

A I did not.

Q Did you have a conversation inside the establishment with his friend, Deleon?

A I did not.

Q So an employee called you over because there had been a fight. What did you understand your responsibilities to be? Why were you being summoned?

A Because I'm the policeman working the place.

Q And did you say or do anything?

A No.

Q You just followed the employee?

A I did.

Q Did you put your hands on Thomas at any

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point?

A No.

Q Did you know exactly what had happened between Thomas and his friend?

A Not one clue.

Q You had no idea who threw a punch?

A No.

Q Didn't know any punches had been thrown?

A Nothing.

Q So you didn't know if Thomas was an innocent victim, whether he threw any punches, you just have no idea one way or the other, right?

A I haven't a clue as to what happened with any of them.

Q How close did you get to Thomas?

A I wasn't close at all to him.

Q Do you know whose idea it was to eject these two individuals from the establishment?

A I do not.

Q It wasn't your decision?

A I was not consulted about it, no.

Q Do you know if anybody called 911?

A I do not know.

Q Was that discussed?

A No.

Q Did you offer it? Did you say, "Do you guys want to call 911"?

A Nope.

Q Did you ask anybody if they wanted to report any crime?

A I didn't speak to anyone.

Q Did you have any reason to think a crime had occurred inside the establishment?

A I didn't have reason to think anything other than an altercation or fight occurred.

Q Was that a basis for you to think that any crime had occurred?

A I guess -- I guess it depends.

Q I mean, as you're walking out with Thomas, in your mind, are you thinking that criminal activity has just occurred in this establishment?

A I don't know. At that point, I don't know because all I'm told is there was a fight, so I know that from the employee, there's a fight. That's all I know.

Q Beyond that, you didn't know anything

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else?

A Right.

Q Didn't draw any other conclusions?

A Right.

Q Well, did Thomas appear to be compliant when he was being escorted out of the establishment?

A He was walking. Compliant? I don't know. Walking, he was walking.

Q He went out of the establishment voluntarily, right?

A He had a large group around him. It wasn't voluntarily.

Q Nobody had to physically remove him from the establishment?

A Nobody put hands on him, no.

Q Right. Did it appear that he was giving anybody a hard time about being ejected from the establishment?

A He was speaking his piece.

Q And what was he saying?

A I have no idea. I don't recall what he was saying because I was behind the group.

Q What do you mean "he was speaking his piece"?

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1 A To whatever the circumstances of the
 2 fight, he was saying something, I'm
 3 assuming, towards that, because they were
 4 all nodding their heads in agreement as
 5 they're walking.
 6 **Q Did you --**
 7 **VIDEOGRAPHER: Three minutes**
 8 **of tape.**
 9 MR. TOR: What's that?
 10 VIDEOGRAPHER: Three
 11 minutes.
 12 MR. TOR: Three
 13 minutes.
 14 BY MR. TOR:
 15 **Q Did you hear Thomas objecting verbally**
 16 **or protesting being ejected from the**
 17 **establishment?**
 18 A I don't recall what he said at all.
 19 **Q Right. So you didn't hear him**
 20 **protesting?**
 21 A Like I said, I can't speak what he was
 22 saying because I didn't hear it.
 23 **Q Okay. Did he fight with you as he was**
 24 **being escorted out?**
 25 A With me?

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1 **Q Yes.**
 2 A No.
 3 **Q Did he fight with any of the employees**
 4 **while being escorted out?**
 5 A No.
 6 **Q Was this the first time you had ever**
 7 **seen this individual, Thomas Yatsko?**
 8 A I never seen him before.
 9 **Q Did you feel threatened by him as he**
 10 **was leaving?**
 11 A No.
 12 **Q Did you feel threatened by his friend?**
 13 A No.
 14 **Q Did any of The Corner Alley employees**
 15 **express to you their concern about these two**
 16 **individuals?**
 17 A They did not.
 18 **Q And once Thomas got outside, did you**
 19 **also go outside?**
 20 A I followed them out, yes.
 21 **Q How far out did you follow them?**
 22 A Six or eight feet.
 23 **Q You were still with inside the patio by**
 24 **the time you returned to come back inside?**
 25 A It would have been -- it would have

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1 been real close to the sidewalk, the common
 2 sidewalk.
 3 VIDEOGRAPHER: We're off the
 4 record.
 5 ---
 6 (Short recess to change tapes.)
 7 ---
 8 VIDEOGRAPHER: We're back on
 9 the record.
 10 BY MR. TOR:
 11 **Q How much were you paid at The Corner**
 12 **Alley?**
 13 A It was \$100 a night.
 14 **Q For the 9:00 p.m. to 1:00 a.m. shift?**
 15 A Yes.
 16 **Q What about the patrol officers, did**
 17 **they get --**
 18 A Same.
 19 **Q Did that lieutenant ever work at The**
 20 **Corner Alley, to your knowledge?**
 21 A Not to my knowledge.
 22 **Q All right. So we were talking about**
 23 **how you walked along with the employee to**
 24 **escort Thomas out of the establishment.**
 25 **Did you have authority to remove a**

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1 **patron from The Corner Alley?**
 2 A Yes.
 3 **Q And who gave you that authority?**
 4 A The state of Ohio.
 5 **Q Okay. So that was authority you**
 6 **believed you had as a licensed police**
 7 **officer?**
 8 A Yes.
 9 **Q So you got outside and did you have a**
 10 **conversation with Thomas at that point?**
 11 A No con -- well, yeah, I did, yes.
 12 **Q What'd you say, what did he say?**
 13 A He and Delano?
 14 **Q Deleon.**
 15 A Deleon. Excuse me. Were talking with
 16 each other like they were friends and I
 17 remember asking them, "Are you guys
 18 friends," and Deleon saying, "I thought he
 19 were," and I said, "It's a funny way to
 20 treat your friends."
 21 **Q What did you mean by that?**
 22 A Fight with your friends, the fighting
 23 with your friends, engaged in a fight with
 24 your friends. That's what I meant.
 25 **Q But I thought you told me you didn't**

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1 **know what had happened?**
 2 A Well, I was told a fight occurred.
 3 **Q And you didn't know the circumstances**
 4 **of the fight?**
 5 A Correct.
 6 **Q You didn't know who threw -- whether**
 7 **one or both ever them punched or shoved or**
 8 **threw any objects at the other?**
 9 A Right.
 10 **Q Was anything else said during this**
 11 **conversation?**
 12 A The only thing that I said to them was,
 13 "You cannot come back inside."
 14 **Q Okay. And was a Corner Alley employee**
 15 **with you at the time that you said that to**
 16 **them?**
 17 A I do not recall any of them being
 18 there.
 19 **Q Did a Corner Alley employee also tell**
 20 **them that they couldn't come back into the**
 21 **establishment?**
 22 A I don't know. I don't know.
 23 **Q Why did you tell them they couldn't**
 24 **come back in?**
 25 A Because of what I was told, the fight.

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1 **Q The fight. Did a Corner Alley employee**
 2 **say to you, "Please tell them that they**
 3 **can't come back into the establishment"?**
 4 A No.
 5 **Q This was a decision you made on your**
 6 **own to tell them that they couldn't come**
 7 **back in?**
 8 A Yes.
 9 **Q Had you ever removed anybody from The**
 10 **Corner Alley prior to this incident?**
 11 A No.
 12 **Q And then you went back into The Corner**
 13 **Alley?**
 14 A I did.
 15 **Q And what's the next thing that you**
 16 **remember happening once you got inside?**
 17 A I sat down at the edge of the bar.
 18 **Q Near the window, facing --**
 19 A The whole front is windows. Would have
 20 been I guess on the part by the
 21 entrance/exit door.
 22 **Q And what were you doing there?**
 23 A Just sitting there.
 24 **Q Were you watching what was happening on**
 25 **the public sidewalk or out on the street?**

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1 A I was not.
 2 **Q Where were you facing, facing inward?**
 3 A I was on a stool, so this way, that
 4 way, turn. You know, just kind of looking
 5 around.
 6 **Q Looking around. Not looking at**
 7 **anything in particular?**
 8 A Right.
 9 **Q But you were not observing what was**
 10 **happening outside?**
 11 A I was not, no.
 12 **Q And what's the next thing you remember**
 13 **happening?**
 14 A A lady coming up to me saying that they
 15 were fighting in the middle of Euclid
 16 Avenue, middle of the street I believe she
 17 said.
 18 **Q Did you witness the fight from inside**
 19 **The Corner Alley?**
 20 A No.
 21 **Q And when you heard this, what did you**
 22 **do?**
 23 A I went outside.
 24 **Q Did you have your jacket on at the**
 25 **time?**

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1 A Yes.
 2 **Q And what was your purpose in going**
 3 **outside?**
 4 A To see if what the citizen told me was,
 5 in fact, going on.
 6 **Q And if it proved to be correct, what**
 7 **was your plan? What were you going to do?**
 8 A Was going to intervene, going to take
 9 steps to stop the fight.
 10 **Q And is that what you ended up doing?**
 11 **Did you intervene to stop the fight?**
 12 A I did intervene, yes.
 13 **Q Did you observe any of the fight?**
 14 A Yes.
 15 **Q What did you observe?**
 16 A I observed Thomas putting the boots to
 17 Deleon on the ground, punching him, head and
 18 face, body, kicking his body.
 19 **Q And what was Deleon doing?**
 20 A He was defenseless. He wasn't doing
 21 anything.
 22 **Q And did you see any weapon either in**
 23 **Deleon's hand or Thomas's hand?**
 24 A Other than his fists, no.
 25 **Q And so what did you do to intervene?**

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1 A Put my hand on his shoulder.
 2 **Q Whose?**
 3 A Thomas.
 4 **Q You put your hand on his shoulder. Was**
 5 **it his left or his right shoulder?**
 6 A I don't know.
 7 **Q You put your hand on his shoulder.**
 8 **Then did you pull him away?**
 9 A Just to get him off of the kid, yes.
 10 **Q Did you have to use much effort to do**
 11 **that?**
 12 A Yes.
 13 **Q Did you use one hand or two hands?**
 14 A One hand.
 15 **Q You were able to get him off with one**
 16 **hand?**
 17 A Yes.
 18 **Q And what'd you say to him?**
 19 A I didn't say anything to him.
 20 **Q Did you say anything to Deleon?**
 21 A No.
 22 **Q Okay. So what happens next?**
 23 A Thomas turns to me, faces me and with
 24 the closed fists is getting ready to punch
 25 me with the closed fists.

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1 **Q Thomas is getting ready to punch you**
 2 **with the closed fist?**
 3 A Right.
 4 **Q And what do you say or do?**
 5 A I tell him, I said, "Look who you're
 6 going to punch."
 7 **Q Did you identify yourself as a police**
 8 **officer?**
 9 A I did.
 10 **Q All right. So when you were observing**
 11 **Thomas, quote, "putting the boots to**
 12 **Deleon," did you have your weapon on you,**
 13 **your gun?**
 14 A Yes.
 15 **Q And did you take your gun out of your**
 16 **holster?**
 17 A I did not.
 18 **Q Why not?**
 19 A Didn't. I didn't -- I just didn't.
 20 **Q Wasn't necessary?**
 21 A Wasn't necessary.
 22 **Q And did you -- were you planning to**
 23 **arrest either Deleon or Thomas at that**
 24 **point?**
 25 A I didn't have a plan at that point.

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1 **Q Deleon testified, and you know because**
 2 **you were there, that you threatened to**
 3 **arrest him. Do you recall saying that?**
 4 A I do not recall saying that to him.
 5 **Q Do you deny that you said that?**
 6 A I don't deny it.
 7 **Q Do you recall seeing Deleon walk away**
 8 **after you intervened to break up the fight?**
 9 A No.
 10 **Q Deleon testified that after you**
 11 **intervened to break up the fight, Thomas did**
 12 **not say anything to you. Is that correct?**
 13 A I don't recall him saying anything to
 14 me.
 15 **Q Deleon also testified that Thomas never**
 16 **made any gestures towards you. Do you**
 17 **dispute that testimony?**
 18 A I do, yes.
 19 **Q Deleon testified that Thomas never**
 20 **threatened you. Do you dispute that**
 21 **testimony?**
 22 A I do.
 23 **Q Deleon said that you were being nasty**
 24 **to him, to Deleon. Do you have any reason**
 25 **to dispute that?**

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1 A I wasn't being nasty to him.
 2 **Q You do dispute Deleon's testimony on**
 3 **that point?**
 4 A Yeah, I wasn't nasty to the kid.
 5 **Q Deleon testified that you cursed at**
 6 **him. Did you curse at him?**
 7 A Not at him, no.
 8 **Q Well, he recalls you saying something**
 9 **to the effect of "Fuck your phone." Did you**
 10 **say that to Deleon?**
 11 A I did say that.
 12 **Q And why did you say that?**
 13 A Because my purpose was not to look for
 14 his phone, my purpose was to get him out of
 15 an active street that had cars driving up
 16 and down on it, on snowy and ice conditions,
 17 so I did say, "Forget your fucking phone,
 18 we'll get your phone. Don't worry about
 19 your phone. Your phone is not the thing we
 20 have to worry about at this time."
 21 **Q And did you help Deleon get out of the**
 22 **street?**
 23 A I did.
 24 **Q Did you pick him up?**
 25 A I helped him to his feet, yes.

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1 **Q Okay. Was this before or after Thomas**
2 **tried to punch you?**
3 A It would have been after.
4 **Q Okay. So the sequence of events,**
5 **according to you, is you break up the fight**
6 **and Thomas goes to punch you?**
7 A Correct.
8 **Q You identify yourself as a police**
9 **officer and he doesn't punch you?**
10 A No.
11 **Q And then Deleon says something in**
12 **response, you say, "Fuck your phone," and**
13 **then you help him out of the street?**
14 A Yes.
15 **Q Okay. And what is Thomas doing at this**
16 **point?**
17 A He is gone. I have no idea where he
18 went. He ran off.
19 **Q Did you witness any crime occurring**
20 **when you came out of the Corner Alley and**
21 **saw Thomas and Deleon?**
22 A Yes.
23 **Q What crime did you witness?**
24 A Assault, possibly a felonious assault,
25 depending on the outcome of his injuries.

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1 **Q And who had committed the assault,**
2 **possible felonious assault?**
3 A Thomas.
4 **Q Did you report it? Did you call 911 to**
5 **report the incident?**
6 A Did not.
7 **Q Did you report it to anybody inside The**
8 **Corner Alley?**
9 A I did not.
10 **Q Did you arrest Thomas at that point**
11 **after you observed him --**
12 A Did not.
13 **Q -- after you observed the felonious**
14 **assault?**
15 A I did not.
16 **Q Why not?**
17 A I didn't have an opportunity to do any
18 of those stages that you just doled out. I
19 didn't have an opportunity to do any of
20 that.
21 **Q Did you tell Thomas that "I'm going to**
22 **arrest you for committing an assault"?**
23 A I did not tell him that.
24 **Q All right. What's the next thing that**
25 **you do after this episode happens and after**

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1 **you have apparently helped Deleon out of the**
2 **street?**
3 A I walked with him down -- would have
4 been almost to, like, the edge of The Corner
5 Alley's building.
6 **Q And what was your purpose in walking**
7 **with Deleon and escorting him?**
8 A Wanted to put some distance between him
9 and Thomas.
10 **Q Did you say anything to Deleon?**
11 A Yes. I told him that I wanted him to
12 stay down there and that I was going to go
13 and get an ambulance and a police car for
14 him.
15 **Q Your plan was to get a police car and**
16 **get an ambulance for him?**
17 A Correct, because I could see he was
18 bleeding from his mouth.
19 **Q And did you call anybody to get an**
20 **ambulance or a police car?**
21 A I never got the opportunity to.
22 **Q And so you told Deleon to stay where he**
23 **was?**
24 A Yes.
25 **Q And were you telling him that as a**

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1 **police officer, that you were ordering him**
2 **to stay in place, stay put?**
3 A I was telling him that I needed to go
4 get medical attention for him and a police
5 car; so, yes. Yes, I guess as a policeman.
6 **Q You were ordering him to stay there?**
7 A I wasn't ordering him. I was telling
8 him to stay there. He's not under arrest,
9 I'm not detaining him, so I didn't give him
10 an order to stay there.
11 **Q Did you tell him, "I'm going to try to**
12 **help you and get you" --**
13 A Absolutely, yes.
14 **Q Okay. So what's the very next thing**
15 **you do after you tell Deleon to stay put?**
16 A I started walking back towards the
17 front of the building.
18 **Q Then what happens?**
19 A That's where I'm met with Thomas.
20 **Q At any point did you help somebody park**
21 **along Euclid Avenue?**
22 A No.
23 **Q And where did you encounter Thomas?**
24 A Right on that sidewalk entrance/exit to
25 the fenced in area.

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1 **Q And did you say anything to him?**

2 A I don't recall saying anything to him.

3 **Q Do you recall telling him that you were**
4 **placing him under arrest?**

5 A No.

6 **Q Did you tell him that you're going to**
7 **call a police unit to have him arrested?**

8 A Did not.

9 **Q But that was your plan?**

10 A No. My plan was to get Deleon medical
11 attention.

12 **Q I see. And so then why did you engage**
13 **with Thomas? Why did you have a**
14 **conversation with Thomas?**

15 A He was right there. There was no
16 passing, or anything of that nature. He
17 engaged me.

18 **Q Did you have a cell phone on you?**

19 A Yes.

20 **Q Why did you have to walk back in order**
21 **to use your cell phone to call for an**
22 **ambulance?**

23 A Because it was January 13th, it was
24 cold outside. I wanted to get inside where
25 I knew I was safe and I could make the

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1 proper notifications to get this kid some
2 medical attention.

3 **Q I see. So your plan was to go back**
4 **inside where it was warmer and then place a**
5 **call to get medical attention for Deleon?**

6 A That's correct.

7 **Q And is it your testimony that Thomas**
8 **blocked you or prevented you from going back**
9 **inside?**

10 A He was right there.

11 **Q So was he blocking you?**

12 A I don't remember if it was blocking or
13 what the circumstance was. He was right
14 there, though. I could not egress any
15 further.

16 **Q So Thomas was the one that -- or was**
17 **the reason, his presence was the reason you**
18 **couldn't go back inside The Corner Alley?**

19 A Yes.

20 **Q I see. And did you tell him that, say**
21 **"You need to move out of the way because I**
22 **need to get help for your friend"?**

23 A I don't recall telling him anything.

24 **Q And how long did you interact with**
25 **Thomas before --**

1 A Very briefly.

2 **Q Did he say anything to you during this**
3 **interaction before the altercation began?**

4 A I don't recall.

5 **Q You don't recall what, if anything, you**
6 **said to him and you don't recall what, if**
7 **anything, he said to you?**

8 A Correct.

9 **Q Do you recall anything that Breann**
10 **Steele, the young woman who was in the**
11 **patio, the blond woman, do you recall her**
12 **saying anything to you or to Thomas?**

13 A No.

14 **Q When you came back to the patio and you**
15 **interacted with Thomas, did you observe him**
16 **threatening anybody?**

17 A Anybody in general?

18 **Q Anyone at all.**

19 A No.

20 **Q Did you see him being aggressive or**
21 **violent towards anybody?**

22 A No.

23 **Q Did he have a weapon on him?**

24 A Not to my knowledge.

25 **Q In either hand did he have a weapon?**

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1 A Not to my knowledge.

2 **Q That whole night, you had never seen**
3 **Thomas with a weapon in his hand, correct?**

4 A I never seen him before.

5 **Q With a weapon in his hand ever?**

6 A I never saw him, no, with a weapon.

7 **Q And do you recall what Breann Steele**
8 **was doing when you confronted Thomas?**

9 A I do not.

10 **Q So when you were turned to the patio**
11 **area and you confronted Thomas, your plan**
12 **wasn't to interact with Thomas, your plan**
13 **was just to go back inside; is that correct?**

14 A Yes.

15 **Q And when you confronted Thomas at the**
16 **edge of the patio, do you recall what he was**
17 **doing?**

18 A I want to say smoking.

19 **Q Smoking a cigarette?**

20 A I didn't see what it was.

21 **Q And at that point, he was standing on**
22 **the sidewalk?**

23 A Right in that area.

24 **Q Sidewalk right by the patio?**

25 A By the entrance/exit to the patio.

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1 **Q And did you notice that his coat was**
2 **slung over the patio wall?**
3 A I don't recall.
4 **Q Was Thomas being rude to you during**
5 **this interaction?**
6 A I don't recall what he said to me or if
7 he was rude or not. I don't recall.
8 **Q Do you recall whether he was being**
9 **disrespectful to you?**
10 A At that moment, no, I don't recall
11 anything.
12 **Q You told me that you never at any point**
13 **saw Thomas with a weapon on him. My**
14 **question is did you see any weapon near**
15 **Thomas at this moment when you're**
16 **interacting with him?**
17 A Nothing that I can think of, no.
18 **Q Nothing that he could possibly grab and**
19 **use as a weapon?**
20 A Not that I can think of.
21 **Q When you interacted with Thomas, did**
22 **you smell alcohol on his breath?**
23 A I didn't smell anything.
24 **Q Did he appear to be slurring his**
25 **speech?**

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1 A Again, I don't recall.
2 **Q Was he stumbling?**
3 A I don't recall.
4 **Q Are you aware of the postmortem**
5 **toxicology test results which reveal --**
6 A I am not.
7 **Q Okay. Well, they revealed that Thomas**
8 **did not have any alcohol in his system. My**
9 **question to you is did you have any reason**
10 **to think Thomas was under the influence of**
11 **drugs or alcohol?**
12 A No. I mean, no, nothing led me to
13 believe either way, yes or no.
14 **Q When you re-contacted Thomas at the**
15 **edge of the patio, did you conduct a threat**
16 **assessment of him?**
17 A No.
18 **Q At some point, you do have an**
19 **altercation with Thomas, correct?**
20 A Yeah.
21 **Q Okay. Tell me everything you remember**
22 **about the altercation.**
23 A This is where I'm going to have to
24 stop you because of the ongoing criminal
25 investigation and advice of my counsel that

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1 I won't be able to answer that question at
2 this time.
3 **Q Okay. So you're invoking your Fifth**
4 **Amendment? Is that what you're doing?**
5 A If that's what you'd like to call it,
6 yes.
7 **Q Okay. All right. So what is the**
8 **basis for your refusal, what is the legal**
9 **basis for your refusal to answer my**
10 **question, which was tell me about the**
11 **altercation?**
12 A Because of the ongoing investigation,
13 criminal investigation into the matter.
14 **Q What is the legal right that you're**
15 **asserting?**
16 A On advice of my counsel and I guess
17 since you said it already for me, the Fifth
18 Amendment.
19 **Q Okay. All right. I still have to ask**
20 **you questions, okay?**
21 A I do understand that, sir.
22 **Q Okay. You were in attendance at the**
23 **case management conference for this case**
24 **before Judge Polster, correct?**
25 A Mm-hmm.

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1 **Q Yes?**
2 A Yes, I was, yes. Sorry.
3 **Q And you recall at that conference,**
4 **Judge Polster asked you what happened,**
5 **correct?**
6 A I do.
7 **Q And you recall telling him your**
8 **recollection of what happened, correct?**
9 A I do.
10 **Q And at that point, you did not invoke**
11 **your Fifth Amendment and refuse to answer**
12 **the Court's questions, correct?**
13 A I did not, no.
14 **Q You answered the judge's questions**
15 **about what happened during the altercation,**
16 **correct?**
17 A To the best that I can remember, yes.
18 **Q And he asked you follow-up questions,**
19 **correct?**
20 A I don't remember if he did or not.
21 **Q Okay. But there was no question that**
22 **the Court asked that you refused to answer;**
23 **is that fair?**
24 A I don't remember refusing, no.
25 **Q Okay. But you're now invoking your**

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1 **Fifth Amendment right and refusing to answer**
 2 **these questions?**
 3 A That's correct, yes, sir.
 4 **Q And for the record, your lawyer was**
 5 **present during the conference with the Court**
 6 **when you were asked questions about the**
 7 **incident, correct?**
 8 A Yes.
 9 **Q And your lawyer didn't object on your**
 10 **behalf, correct?**
 11 A I don't believe so, no.
 12 **Q Okay. And all the other lawyers were**
 13 **present at the conference?**
 14 A There was a lot of people there.
 15 **Q Right.**
 16 MR. TOR: All right.
 17 So, David, my position is that your
 18 client has waived his Fifth
 19 Amendment right regarding this
 20 incident, based both on the fact
 21 that he voluntarily answered the
 22 Court's questions about the incident
 23 and also based on the fact that he
 24 has answered a number of questions
 25 in this deposition related to that

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1 night and what happened in the
 2 events leading up to the
 3 altercation, and also because he has
 4 voluntarily answered discovery
 5 questions propounded to him in this
 6 litigation, and so my proposal is
 7 that we get the Court on the phone,
 8 see if he's available to address
 9 this issue.
 10 MR. LENEGHAN: Whatever
 11 manner you want to try to
 12 accomplish, whatever you want to try
 13 to do. We can certainly do that
 14 either by telephone or written
 15 motions, or whatever the case may
 16 be.
 17 MR. TOR: Well, why
 18 don't we try by telephone and we'll
 19 see what -- yeah, we can go off the
 20 video, but stay on the record with
 21 the court reporter.
 22 ---
 23 (At this time, Mr. Tor is
 24 making a phone call to Judge Polster.)
 25 ---

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1 (THE FOLLOWING IS NOT ON THE VIDEO RECORD)
 2 ---
 3 VOICEMAIL GREETING: You
 4 have reached the chambers of the
 5 Honorable Dan A. Polster. We are
 6 either on the phone or away from our
 7 desks. Please leave a detailed
 8 message, including your name and
 9 phone number, and we'll get back to
 10 you as soon as we can. Thank you.
 11 "Record your message at the
 12 tone. When you are finished, hang
 13 up or hit # for more options."
 14 MR. TOR: Good
 15 afternoon. This is Jeremy Tor
 16 calling regarding the matter of
 17 Yatsko versus Graziolli, Case Number
 18 18-cv-814. We are in the middle of
 19 the deposition of Sergeant Dean
 20 Graziolli. We've been going for
 21 almost four hours and so far, the
 22 officer has answered questions, but
 23 when I began asking questions about
 24 the altercation at issue in this
 25 lawsuit, he invoked his Fifth

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1 Amendment and refused to answer the
 2 question.
 3 Plaintiff's position is that
 4 he has waived his Fifth Amendment
 5 right. I am in the conference room
 6 with all the lawyers present, along
 7 with the court reporter, who's
 8 transcribing this, and the witness
 9 himself.
 10 If anybody from the defense
 11 side wants to speak up and say
 12 anything on this message.
 13 MR. LENEGHAN: This is David
 14 Leneghan. We object to your
 15 position and we vehemently oppose it
 16 and disagree with it. There has
 17 been no waiver. He's properly
 18 invoked his constitutional rights as
 19 he's now being questioned under oath
 20 and believe he fully has the right
 21 to do so, particularly since we've
 22 been informed that the criminal
 23 investigation is still ongoing at
 24 this time and the officer even
 25 testified to that earlier in his

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1 deposition, some two or three hours
2 ago.
3 MR. TOR: We should be
4 at this number for the next couple
5 of hours. It's 216-696-3232 if the
6 Court would become available. Thank
7 you.
8 Anybody else want to add
9 anything?
10 MR. ROCHE: No, thank
11 you.
12 ---
13 VIDEOGRAPHER: We're back on
14 the record.
15 BY MR. TOR:
16 **Q Were you using your position as a**
17 **Cleveland police officer to compel or coerce**
18 **Thomas Yatsko into leaving the area when you**
19 **confronted him at the edge of the patio?**
20 MR. PIKE: Objection.
21 Form.
22 MR. ROCHE: Objection.
23 A No.
24 **Q Have you read the deposition transcript**
25 **of Breann Steele?**

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1 A I have not.
2 **Q Okay. Are you aware what her testimony**
3 **is?**
4 A No.
5 **Q She testified that after you approached**
6 **Thomas near the edge of the patio, you told**
7 **him, "It's time to go, you need to get the**
8 **fuck on." Did you say that to him?**
9 A No.
10 **Q You dispute her testimony?**
11 A Yes.
12 **Q In your police training, were you**
13 **trained to use the phrase, "Get the fuck on"**
14 **as part of a de-escalation technique?**
15 A No.
16 **Q Is it a proper de-escalation technique?**
17 A No.
18 **Q Did you tell Thomas that he needs to**
19 **leave?**
20 A I don't recall.
21 **Q Would that have been an appropriate**
22 **thing for you to say?**
23 A The only thing I remember telling him
24 is, "You can't come back in the bar."
25 **Q And when did you tell him this?**

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1 A After the fight inside the bar.
2 **Q Did you tell that to him, or something**
3 **to that effect, again when you recontacted**
4 **him at the edge of the patio?**
5 A I don't recall saying that to him, no.
6 **Q Was Thomas committing a crime standing**
7 **on the sidewalk, smoking a cigarette?**
8 A No.
9 **Q Did you have reason to think Thomas had**
10 **committed any crime up to that point?**
11 A Yes.
12 **Q So why didn't you arrest him?**
13 A He wasn't my main concern.
14 **Q You told me earlier that a police**
15 **officer, even when he's working secondary**
16 **employment, has a responsibility to arrest**
17 **an individual he witnesses committing a**
18 **crime. You claim to have witnessed him**
19 **committing a crime, correct?**
20 MR. PIKE: Objection.
21 Form.
22 A I did witness.
23 **Q But you did not arrest him?**
24 A Right.
25 **Q Did you call for backup to have**

Page 208

1 **somebody arrest Thomas?**
2 A Never got the opportunity to do that.
3 **Q Was that going to be your plan?**
4 A That was what I was going to do.
5 **Q Ms. Steele testified that Thomas**
6 **explained to you that he didn't have a ride**
7 **home. Do you recall hearing that?**
8 A I don't remember anything like that.
9 **Q Ms. Steele testified that you said to**
10 **Thomas, quote, "I've given you plenty of**
11 **chances tonight." What did you mean by**
12 **that?**
13 A I don't recall saying that to him.
14 **Q Do you deny saying that?**
15 A Yeah, because I don't remember saying
16 -- interacting with him at all other than
17 what I told you after the first fight,
18 that's it.
19 **Q Did Thomas ask for you to call a unit**
20 **for a ride home?**
21 A No.
22 **Q Were you aware that Thomas was looking**
23 **for a ride home?**
24 A No.
25 **Q Did you do anything to help him get a**

Page 209

1 ride home?

2 A No.

3 Q Did you say to him, "You can walk for

4 all I care"?

5 A No.

6 Q Did you say, "You need to get the fuck

7 out of here"?

8 A No.

9 Q That was Breann Steele's testimony. Do

10 you dispute her testimony?

11 A Yes.

12 Q Were you annoyed with Thomas?

13 A No.

14 Q Were you fed up with him?

15 A No.

16 Q Were you scared by him?

17 A No.

18 Q Did you feel threatened by him?

19 A No.

20 Q Did you feel he was disrespecting you?

21 A No.

22 Q You told me that it was terrible

23 outside and it was very cold. Did you

24 expect that Thomas would just start walking

25 home?

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1 A I didn't know what he was going to do.

2 Q Was there any urgency that required

3 Thomas to leave the area, from your point of

4 view?

5 A No.

6 Q Did he make any attempts that you could

7 see to go back inside The Corner Alley?

8 A No.

9 Q Did Breann say -- Breann Steele say,

10 "We can call him an Uber"?

11 A I don't recall her saying anything.

12 Q Okay. Do you recall her saying, "If

13 you're going to make him walk, at least let

14 him get his coat"?

15 A No.

16 Q Do you remember Thomas grabbing his

17 coat?

18 A No, I don't recall that at all.

19 Q Did you hand him his coat?

20 A I don't know.

21 Q You don't know?

22 A I don't know.

23 Q Breann Steele testified that you told

24 Thomas, quote, "I don't like your body

25 language." Do you recall saying that to

Page 211

1 Thomas?

2 A No.

3 Q Do you dispute that?

4 A Yes.

5 Q Ms. Steele said that you went

6 toe-to-toe with Thomas. Do you dispute

7 that?

8 A Yes.

9 Q She testified that both you and Thomas

10 threw punches at one another. Do you

11 dispute that?

12 A Yes.

13 Q Did Thomas throw any punches at you?

14 A Yes.

15 Q Did Thomas shove you?

16 A I don't know.

17 Q How many times did Thomas punch you?

18 A Multiple times.

19 Q Where did he punch you?

20 A In the face and head.

21 Q Did you punch him?

22 A No.

23 Q Did you shove him?

24 A No.

25 Q Did you touch him at all?

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1 A I don't recall touching him, no.

2 Q Do you recall pulling your gun?

3 A Yes.

4 Q Why did you pull your gun?

5 A To back him off of me.

6 Q Did you tell Thomas you were going to

7 pull your gun before you did so?

8 A No.

9 Q Breann Steele's testimony is that you

10 and Thomas threw an even number of punches.

11 I take it you dispute that testimony?

12 A Yes.

13 Q She testified that you approached

14 Thomas aggressively. Do you dispute that?

15 A Yes.

16 Q She testified that you initiated the

17 aggression. Do you dispute that?

18 A Yes.

19 Q She testified that you provoked Thomas

20 to fight. Do you dispute that?

21 A Yes.

22 Q At any point during the altercation

23 with Thomas did you tell him he was under

24 arrest?

25 A No.

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1 **Q Do you recall shooting Thomas?**
 2 A I do not.
 3 **Q Did you warn Thomas before shooting**
 4 **him?**
 5 A I don't recall any of the incident.
 6 **Q Is any of your -- is your memory -- let**
 7 **me start that question over.**
 8 **Do you have a memory of the entire**
 9 **altercation with Thomas?**
 10 A No.
 11 **Q Are there parts that you don't**
 12 **remember?**
 13 A Yes.
 14 **Q Which parts don't you remember?**
 15 MR. PIKE: Objection.
 16 Form.
 17 A It's hard to say from where it starts
 18 and where it ends.
 19 **Q You do have a memory of pulling your**
 20 **gun?**
 21 A I do.
 22 **Q You don't have a memory of pulling the**
 23 **trigger?**
 24 A I do not.
 25 **Q What is your next memory after pulling**

Page 214

1 **the trigger?**
 2 A I hear somebody -- somebody yelling
 3 something about a gun.
 4 **Q And did you see a gun in your hand?**
 5 A Yes.
 6 **Q And what did you do once you saw that**
 7 **you had a gun in your hand?**
 8 A I believe I put it away.
 9 **Q And why did you put it away?**
 10 A Just, you know, like instinct, I
 11 guess. I don't know. I don't have an
 12 answer as to why I put it away right away.
 13 I don't -- I don't have an answer.
 14 **Q Was there any reason for you to keep it**
 15 **out?**
 16 A I don't know.
 17 **Q Do you believe that your police**
 18 **training kicked in during this incident?**
 19 MR. PIKE: Objection.
 20 Form, foundation.
 21 A I believe -- I believe survival kicked
 22 in on this instance.
 23 **Q What do you mean by that?**
 24 A Survival. I mean, I don't -- I'm not
 25 going to say that the police training, or

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1 anything of that nature, was what -- like a
 2 light switch, nothing like that.
 3 It's just survive, you're trying to
 4 survive, I was trying to survive being
 5 maliciously attacked. That's what I
 6 remember.
 7 **Q So Thomas weighed at the time about 149**
 8 **pounds. How much did you weigh at the time**
 9 **of the incident?**
 10 A I have no idea. Probably about 245
 11 maybe.
 12 **Q And how tall are you?**
 13 A Five seven I am.
 14 **Q Do you recall whether Thomas was taller**
 15 **or shorter than you?**
 16 A I would say the same height.
 17 **Q Did he appear to be smaller than you in**
 18 **terms of stature and weight?**
 19 A He appeared to be muscular.
 20 **Q And I think you told me earlier you**
 21 **were able to remove him from Deleon with**
 22 **just one hand; is that right?**
 23 A Yeah.
 24 **Q Do you recall Thomas saying anything**
 25 **to you during the altercation?**

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1 A I remember two things. I can remember
 2 him -- I can remember him shouting that I
 3 was going to have to kill him and I can
 4 remember him shouting that he was going to
 5 kill me.
 6 **Q Your testimony is that Thomas**
 7 **threatened to kill you?**
 8 A Yes.
 9 **Q And when did he do this? When did he**
 10 **make this threat to you?**
 11 A As he was attacking me.
 12 **Q Was that before or after you drew your**
 13 **weapon?**
 14 A He was attacking me before I drew my
 15 weapon.
 16 **Q For how long before you drew your**
 17 **weapon?**
 18 A I don't know.
 19 **Q Seconds, minutes?**
 20 A I have no idea.
 21 **Q Do you remember how many punches he**
 22 **landed on you before you drew your weapon?**
 23 A I do not. It was multiple times I was
 24 hit.
 25 **Q You were hit multiple times before you**

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Page 219

1 **drew your weapon?**

2 A Yes; to my recollection, yes.

3 **Q And this whole time, you're telling me**
4 **you didn't put a hand on Thomas?**

5 A Did not.

6 **Q Did Thomas shout, "You'll have to kill**
7 **me" before or after you drew your weapon?**

8 A Before.

9 **Q So Thomas shouted, "You'll have to kill**
10 **me," and then shortly thereafter, you drew**
11 **your weapon?**

12 A I didn't draw my weapon until after I
13 was being attacked.

14 **Q Which was after he had made this**
15 **comment, "You'll have to kill me"?**

16 A Yeah.

17 **Q And was it your intention in drawing**
18 **your weapon to kill Thomas?**

19 A Absolutely not.

20 **Q What was your intention in drawing your**
21 **weapon?**

22 A To get this kid off of me.

23 **Q And did it work when you drew your**
24 **weapon?**

25 A No. It came right threw it.

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1 **Q And so did you reholster your gun since**
2 **that technique didn't --**

3 A No, I did not.

4 **Q Did you pull the trigger as a survival**
5 **instinct?**

6 A I have no idea.

7 **Q You have no idea why you pulled --**

8 A I have no idea. I don't remember it.

9 **Q When Thomas was shouting, "You'll have**
10 **to kill me," and then threatened to kill**
11 **you, when Thomas threatened to kill you,**
12 **what was your understanding about how he was**
13 **going to kill you?**

14 A I have no idea.

15 **Q Did you think he was going to beat you**
16 **to death with his fists?**

17 A I have no idea what he was going to do
18 to me.

19 **Q And did you try to run away?**

20 A I did not try to run away. I was
21 backing away from him.

22 **Q Did you try to get help?**

23 A I was not given a chance to get help
24 from anybody.

25 **Q Did you cry out for help?**

1 A No. I was not given a chance to cry
2 out, to shout, to do nothing.

3 **Q You couldn't have turned back into the**
4 **bar and walked back inside?**

5 A No, I could not have done that, no.

6 **Q And why not?**

7 A Because Thomas was on me like no
8 tomorrow. I don't know how to describe it
9 to you, but he was on me. There was no
10 getting this kid off of me. None.

11 **Q If you had had, say, your Taser on you,**
12 **would you have been able to use it?**

13 A No.

14 **Q What about a baton?**

15 A No.

16 **Q Pepper spray?**

17 A No.

18 **Q And so no intermediate weapon would**
19 **have been --**

20 A No.

21 **Q If you had an intermediate weapon on**
22 **you, you don't think you would have been**
23 **able to use it?**

24 A No.

25 **Q Why not?**

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1 A Because I was being viciously attacked
2 by this kid. I didn't have a chance to do
3 any of that, to get to anything. I'm lucky
4 that I was able to get to my firearm.

5 **Q So you felt your only option was to**
6 **pull your firearm and shoot Thomas?**

7 A That wasn't my -- see, my only option
8 was to survive the attack that I was being
9 placed on by your client. That's the only
10 thing I was able to do was get to my firearm
11 and save my life. That's it.

12 MR. TOR: All right.

13 Why don't we take a five minute
14 break.

15 VIDEOGRAPHER: We're off on
16 the record.

17 - - -

18 (Short recess taken)

19 - - -

20 VIDEOGRAPHER: We are back
21 on the record.

22 BY MR. TOR:

23 **Q All right, sir, I have up on the screen**
24 **video footage. This is from a surveillance**
25 **video camera from The Corner Alley that we**

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1 received from The Corner Alley's lawyers.
 2 I'm not going to play this video for you.
 3 All I'm going to do is ask you to identify
 4 yourself at various points, okay?
 5 A (Nodding).
 6 Q Can you look up at the screen? Okay.
 7 The time stamp is 22:44:17 seconds, right?
 8 It's on the top right?
 9 A Yeah.
 10 Q Okay. So what we're looking at, sir,
 11 is the patio outside The Corner Alley in the
 12 front, correct?
 13 A Yeah.
 14 Q And I've got a cursor here, so I'll use
 15 it. This is you, right, with the dark boots
 16 and the dark pants?
 17 A I don't -- I don't know.
 18 Q Okay. All right. I'll have to show
 19 you a couple clips so we can establish that
 20 that's you. So is that you right there at
 21 22:45:47 where I have my cursor?
 22 A Again, I see -- I see the bottom half
 23 of a torso. I can't tell if that's me.
 24 Q Okay. Fair enough. Let me show you
 25 another still image here. Is that you, sir?

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1 A Right there? That's me, yes.
 2 Q At 22:47:03, and that's your gun in
 3 your right hand?
 4 A I can't really see the gun.
 5 Q Yeah, I'll play it for just a few
 6 seconds so you can see, okay, so keep your
 7 eye on the screen.
 8 A Okay.
 9 Q Is that your gun in your right hand?
 10 A I see the gun now, yes.
 11 Q All right. So that is you; is that
 12 correct?
 13 A That's me, yes.
 14 Q And that's Thomas Yatsko on the ground,
 15 correct?
 16 A Yeah.
 17 Q He's wearing tan boots?
 18 A Yeah.
 19 Q Yeah. So what we're looking at is the
 20 area where the altercation took place
 21 between you and Thomas, right?
 22 MR. ROCHE: Objection.
 23 BY MR. TOR:
 24 Q You were telling us earlier about the
 25 altercation. I just want to confirm, we're

Page 223

1 looking at roughly the location where that
 2 took place?
 3 A Yeah. Yeah, that's my blood right
 4 there on the ground.
 5 Q That's your blood on the ground?
 6 A Right, those multiple spots, that's my
 7 blood, yes.
 8 Q I'm going to go back in time a little
 9 bit, and this area where my cursor is,
 10 that's the edge of the patio, right?
 11 A It looks like -- it looks like where
 12 the boots are at is on the other side of the
 13 patio, which is the common sidewalk --
 14 Q The common --
 15 A -- that I remember, the common
 16 sidewalk. Runs along, you know, Euclid
 17 Avenue.
 18 Q Okay. So where these tan boots are
 19 standing is the common sidewalk area?
 20 A Right.
 21 Q And is this the area where you first
 22 had contact with Thomas?
 23 A That's where -- when I walked up,
 24 that's where he was -- he was standing
 25 there. That's what I remember, yes.

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1 Q Okay. That's all I'm going to show
 2 you, sir, of the video.
 3 You do recall seeing Thomas on the
 4 ground after he had been shot, correct?
 5 A Yes.
 6 Q And you could tell that he was
 7 bleeding?
 8 A I remember -- what I remember is a
 9 large group around him, so I couldn't see
 10 him specifically, I saw the group. I saw
 11 the group.
 12 Q Did you do anything to assess whether
 13 Thomas had been injured?
 14 A Could you be more specific? I don't --
 15 Q Did you look to see if Thomas had been
 16 injured?
 17 A I couldn't see, I couldn't see him,
 18 though, I couldn't see because there was a
 19 crowd of folks around him. I couldn't see.
 20 I could not see.
 21 Q Were you aware that he had been shot?
 22 A At that point, I'm not aware of
 23 anything, not -- no, I'm not aware of
 24 anything, no.
 25 Q You're not aware that you had shot him

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1 **twice at that point?**
 2 A I'm not aware -- I'm not aware of
 3 that. I told you when you asked me about
 4 the gun, the thing that shakes me up is the
 5 gun. I hear the voice about the gun, the
 6 gun. That's kind of what shakes me out of
 7 it, so I don't know what happened in between
 8 there.
 9 **Q Okay. Well, let's talk about what**
 10 **happened afterwards, okay?**
 11 A All right.
 12 **Q So after you were shaken out of it,**
 13 **what do you remember?**
 14 A I remember the people and a lot of,
 15 like, chaotic behavior, a lot of shouting.
 16 You know, a lot of -- a lot of people
 17 running in and out, I remember that. That's
 18 all I remember.
 19 **Q Did you provide any first aid to**
 20 **Thomas?**
 21 A I remember yelling for someone, not
 22 somebody specific, for someone to call 911.
 23 That's all I remember doing.
 24 **Q And why did you think somebody needed**
 25 **to call 911?**

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1 A Well, there was a group of folks around
 2 somebody's down, I could see their boots.
 3 I'm bleeding profusely from my face and
 4 head. I don't know where I'm bleeding
 5 from.
 6 I'm spitting globs, if that's even a
 7 word, I don't know if that's even a word,
 8 you know, huge amounts of blood, I'm
 9 spitting that out, so 911 needs to be
 10 called. The med -- somebody with medical
 11 training needs to come there.
 12 **Q So you're not really sure what had**
 13 **happened, you just knew that 911 needed to**
 14 **be called?**
 15 A Absolutely.
 16 **Q And are you aware of whether any of the**
 17 **people that were around Thomas were medical**
 18 **professionals or capable of providing first**
 19 **aid?**
 20 A I'm not aware of that.
 21 **Q Okay. Did you yourself call 911?**
 22 A I did not.
 23 **Q And why not?**
 24 A I didn't know the extent of my injuries
 25 and I was trying to focus on keeping it

Page 227

1 together, trying to get it together to where
 2 I could understand what was unfolding, what
 3 had happened. I didn't know -- I don't know
 4 -- I don't know how to answer it.
 5 **Q You wanted somebody to call 911, but**
 6 **you weren't going to call 911?**
 7 A I was shouting for someone to call 911,
 8 yes.
 9 **Q And did you tell anybody to let them**
 10 **know that a Cleveland police officer had**
 11 **been involved in some type of situation?**
 12 A I don't recall saying that.
 13 **Q Do you recall saying anything else to**
 14 **anybody other than call 911?**
 15 A No.
 16 **Q What's the next thing you remember?**
 17 A The chao -- the scene, the scene right
 18 there, the chaotic scene becoming even more
 19 chaotic as police and fire, EMS, as those
 20 folks all arrive. So it just, you know,
 21 became a larger, more involved chaotic
 22 scene.
 23 **Q Do you remember seeing Cleveland police**
 24 **officers or any other type of police**
 25 **officers arrive on the scene?**

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1 A I don't remember seeing Cleveland guys.
 2 I remember seeing uniforms. I don't know
 3 which department they were with.
 4 **Q And were you placed in handcuffs and**
 5 **placed under arrest?**
 6 A No.
 7 **Q Were you escorted from the scene by a**
 8 **police officer?**
 9 A No.
 10 **Q How were you removed from the scene?**
 11 A EMS came up to me and saw the extent of
 12 my injuries and walked me to the side of an
 13 ambulance and then I walked inside of it.
 14 **Q And you got into the ambulance and they**
 15 **took you to University Hospitals?**
 16 A Right.
 17 **Q Were you transported by stretcher?**
 18 A No.
 19 **Q And did any other officer ride with you**
 20 **in the ambulance?**
 21 A Yeah. I think I said earlier that I
 22 believe there was two of them.
 23 **Q Do you know which ambulance company it**
 24 **was?**
 25 A It was Cleveland EMS.

Q Did you tell anybody in the ambulance what had happened?

A No.

Q How soon after the incident with Thomas were you taken from the scene by ambulance?

A It was moments. I don't know how long, how much time elapsed.

Q And what happened to your gun? Was it taken from you or did you keep it on you that night?

A No, it was taken.

Q By whom?

A It was initially taken by I want to say Sergeant Todd.

Q Is he with the Cleveland Police Department?

A He is, yes.

Q Did you know him before this incident?

A Yes.

Q And what did he do with the gun?

A Protocol is to turn it over to homicide.

Q When did he take the gun from you?

A I think when we were in the ambulance. I think.

A Yes.

Q That's the one you're carrying? Did you ever complete a use of force report for this incident?

A I did not.

Q And why not?

A I was never instructed to do so.

Q Isn't there a regulation requiring officers to complete use of force reports any time force is used?

A For the -- the -- for -- it's called less lethal, I guess you would call it, less lethal force, there's forms that are done.

For this incident, use of deadly force, I don't know protocol. I believe that homicide handles it all.

Q So you're not sure what the protocol is in terms of reporting the use of lethal force?

A Right, other than what I stated about homicide.

Q Do you claim that Thomas committed any crime against you?

A Yes.

Q What crime?

Q So you think he rode with you in the ambulance?

A I'm not sure. I think there was two guys, but there might have been only one and he came in and left. I'm not really sure.

Q What did Sergeant Todd do to preserve the gun as evidence?

A I have no idea.

Q To make sure that fingerprints didn't get on it? Anything?

A To my knowledge, I have no idea what he did with it.

Q Did you hand him your gun or did he take it from you?

A No, I handed it to him.

Q And have you gotten that gun back?

A No.

Q Do you know where it's being held?

A I would say probably homicide or the coroner's office or maybe our property room. I don't -- I don't know. I don't know what they --

Q So you've been issued a different gun now?

A Felonious assault.

Q Did you document that anywhere?

A I did not, no.

Q Did you at any point claim that Thomas attempted to kill you, attempted homicide?

A Did I -- can you explain how you -- what do you mean by "claim"? I don't understand.

Q Right. Well, you claim that Thomas committed a felonious assault against you. Have you ever claimed that Thomas committed an attempted homicide against you?

A I've never been interviewed by anybody to make that claim, if that makes sense to you.

Q So to whom did you claim the felonious assault, to anybody?

A No.

Q Okay. But you're not claiming that he committed an attempted homicide against you, are you?

A I don't know how it would be interpreted.

Q Okay. Well, I asked you what --

A You're asking me how I would interpret

Page 233

1 it?

2 **Q Yeah.**

3 A I don't know how I would interpret it

4 versus how it is truly interpreted by, like,

5 you know, the courts or who makes that

6 determination. I don't have -- I don't know

7 how to answer the question.

8 **Q Sure. I asked you what crimes Thomas**

9 **had committed against you. The only crime**

10 **you told me is felonious assault, correct?**

11 A Felonious assault. I mean, it could be

12 attempt murder, I guess. I mean, it's all

13 in what -- not so much what I say or what

14 you say, but what the evidence says, and I

15 don't know the answer to the question

16 because I don't know what the evidence says.

17 **Q Well, you're a police officer of 27**

18 **years, so I presume you have a good**

19 **understanding of the criminal code in Ohio,**

20 **fair?**

21 A That's fair, but you got to understand,

22 we only respond -- in basic patrol, we

23 respond to the initial stuff and then

24 everything else investigative is done by

25 somebody else, so what I might say don't

Page 234

1 mean nothing. It's all what they present.

2 That's why I'm having a hard time answering

3 your question.

4 **Q Okay. Well, you didn't have a hard**

5 **time telling me it was a felonious assault.**

6 A Based on my thinking, it's at least a

7 felonious assault, yes.

8 **Q And did you make any documentation?**

9 A I did not, no.

10 **Q And when you were interviewed by the**

11 **internal affairs people last year, did you**

12 **tell them that you believed Thomas committed**

13 **a felonious assault?**

14 A I don't recall them asking me any

15 questions on what I thought.

16 **Q Are you aware of whether the Cleveland**

17 **Police Department conducted an investigation**

18 **into this incident?**

19 A I don't believe they did. I think that

20 the sheriffs did.

21 **Q Were you ever debriefed about this**

22 **incident by anybody at the Cleveland Police**

23 **Department?**

24 A No.

25 **Q Have you ever been provided any**

Page 235

1 **documentation or written materials about**

2 **this incident by anybody from the Cleveland**

3 **Police Department?**

4 A No, I have not.

5 **Q You told me earlier that you're on**

6 **restricted duty. Does that entail any kind**

7 **of medical restrictions on your ability to**

8 **do work?**

9 A No.

10 **Q So you don't have any medical**

11 **restrictions?**

12 A No.

13 **Q So if it weren't for the ongoing**

14 **criminal investigation, your understanding**

15 **is that you'd be able to return to regular**

16 **duty?**

17 A No, not necessarily because I'm still

18 under -- when you said medical, it kind of

19 triggered in my mind. I'm still under

20 concussion protocol and being seen for that,

21 for the concussion, so I guess then there

22 would be medical restrictions until I was

23 cleared of that.

24 **Q Speaking of concussion, have you filed**

25 **a Workers' Comp claim related to this**

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1 **incident?**

2 A Yes.

3 **Q And what is the status of that claim?**

4 A I believe it is on hold.

5 **Q Do you know how long it's on hold for**

6 **or why it's on hold?**

7 A I don't know the reason why and I don't

8 know how long it's on hold for.

9 **Q Do you have an attorney representing**

10 **you in that matter?**

11 A George Mineff.

12 **Q George Mineff. Same guy who**

13 **represented you in your previous Workers'**

14 **Comp claims?**

15 A Right, right.

16 **Q Under whose Workers' Comp coverage have**

17 **you filed the claim, the City of Cleveland**

18 **or Corner Alley?**

19 A No, I believe it was filed under The

20 Corner Alley.

21 **Q And as a requirement in order to get**

22 **approved for secondary employment at Corner**

23 **Alley, did you have to provide the City of**

24 **Cleveland proof of Corner Alley's Workers'**

25 **Comp coverage?**

Page 237

1 A Yes.

2 **Q And to your knowledge, has The Corner**

3 **Alley disputed the Workers' Comp claim?**

4 A I -- I don't know.

5 **Q When was this Workers' Comp claim**

6 **filed?**

7 A It's got to be sometime last year,

8 relatively I would say in the wintertime or

9 spring. I don't know the dates, so...

10 **Q What are you claiming, what injuries**

11 **are you claiming?**

12 A I think the concussion's listed on

13 there, the neck sprain, and I think the

14 issue with the amount of stitches, stitches

15 I had in and outside of my mouth.

16 **Q Are you still suffering from the**

17 **stitches?**

18 A As a matter of fact, I am.

19 **Q What is the problem, the ongoing**

20 **problem related to the stitches?**

21 A On the inside of my lower lip, I can

22 show it to you. I don't know if you can see

23 it or not.

24 **Q Go ahead.**

25 A Can you see it, right in here? There's

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1 a -- I don't know if you can see it. It's

2 kind of like a -- it's not -- like if you

3 ran your tongue around the inside of your

4 mouth, it would be I guess -- there would be

5 no bump in the road per se, if that makes

6 sense.

7 **Q So now you feel a bump?**

8 A There is -- I don't feel it, there is

9 one there.

10 **Q There's a bump there.**

11 A Every time that I eat, I bite down on

12 it, so I am still, yes, suffering from it.

13 **Q Okay. You suffer when you bite down on**

14 **it?**

15 A Whenever I eat and it's, you know, a

16 few times a day, I'll catch it and I

17 (indicating). It catches me, I should say.

18 **Q And are you being provided any medical**

19 **treatment for that?**

20 A I don't know what could be done for

21 it. Something you got to live with.

22 **Q Right. Does it impair your ability to**

23 **do your job in any way?**

24 A I don't believe so.

25 **Q This neck sprain, do you still suffer**

Page 239

1 **from it?**

2 A Yes.

3 **Q What are your symptoms?**

4 A The neck is real stiff, don't have much

5 mobility to the right or to the left, and

6 constant pain.

7 **Q Where is the pain? Can you point to**

8 **it?**

9 A I would say it's on the sides of the

10 neck and then up in the middle. It's kind

11 of like the entire back of the neck going up

12 into my head and then going down into my

13 neck, shoulder area, like the top of your --

14 like, top where your coat would be.

15 **Q And on a scale from 1 to 10, how severe**

16 **is the pain right now?**

17 A Right now, it's probably about 6. It

18 gets as high as, like, 9, 10. I take

19 medication for it, prescribed.

20 **Q What medication?**

21 A I believe it's a muscle relaxer.

22 **Q Are you on a muscle relaxer right now?**

23 A I am not, no.

24 **Q How often do you take a muscle**

25 **relaxer?**

Page 240

1 A As needed.

2 **Q And how often does that -- how often is**

3 **that?**

4 A Depends. You know, a lot of times I

5 get it from sitting or laying a certain way,

6 I'll wake up with it. Other times I'm just

7 -- I'm not doing anything and all of a

8 sudden I can't turn my neck all the way to

9 the left, so it varies.

10 **Q Are you under the care of a doctor for**

11 **this?**

12 A I am.

13 **Q Okay. Well, who's your doctor that's**

14 **treating for your neck sprain?**

15 A That would be -- same one for the

16 concussion. It's Dr. Rainey, Heather

17 Rainey. She's at Metro.

18 **Q Other than the muscle relaxers, has she**

19 **prescribed any other treatment for your neck**

20 **sprain?**

21 A She's -- not for the neck, not for the

22 neck. Well, she's given me a pain

23 medication for my head and neck and she's

24 also prescribed me migraine medication

25 because I get migraines as well.

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Q Has she -- we're over a year now since the incident. Has she told you whether you should expect to have any improvement with respect to your neck sprain?

A She hasn't and the -- there's a holdup with the Workers' Comp, so I can't get physical therapy approved.

Q Well, have you tried to -- have you undergone the physical therapy anyway even though it's not being covered by Workers' Comp?

A I have not, no.

Q Is that something you think you need, physical therapy?

A I would like to do it, but, again, it's not being provided at this time.

Q Okay. Do you have health insurance?

A Through the city, yes.

Q And have you tried to go through that health insurance coverage for physical therapy?

A I have not, no.

Q What about your concussion, do you still suffer the effects of the concussion?

A Most definitely.

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Q Okay. Tell me about that.

A My memory is bad. I don't do well with times, dates, places.

I'll give you one specific. One of my administrative duties at the district was to inventory the riot gear that the city issued us during the Republican National Convention and I was charged with going through and making sure that everybody still had that equipment, and I was speaking to an individual about his equipment and he showed it to me, and I've worked with this guy since I've been in the Fifth District, which is, you know, five years, give or take, and I said to him, I said, "You're going to have to excuse me," I said, "I apologize," I said, "but on this list, can you find your name for me," and he thought, of course, that I'm joking around.

He goes, "Come on, really?"

You know, I could not remember his name and I've worked with this guy closely.

Q Who is this?

A His name is -- he's a detective. Mike -- oh, what is his last name? Oh, boy.

See, this is what I mean.

Q When did this incident occur?

A This is back in -- back probably like September or so when I was doing that equipment.

Q Have you had any other incidents like this where your memory's failed you?

A Yeah, a lot of incidents, you know, with family and friends and it could be -- it could be the smallest thing as remembering a song that you hear that you know and there's no recollection of who sings the song or if it has any meaning to you, or anything like that. I don't have that -- I don't have that memory to pull from.

Q And has your doctor, Dr. Rainey, given you an idea about what your future outlook is with respect to the concussion?

A I'm supposed to go to this thing. I know I'm going to butcher the name. It's some sort of psychotherapy where it's an extensive -- like eight hour thing where they give you -- I don't know if it's testing or it's questions, something along

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those lines, and from that, you are supposed to -- they're supposed to be able to tell you what's next, what you can expect, what the future holds, and I haven't gone to that yet.

Q Do you have an expectation when you will go to that --

A I go to it, because I spoke to the doctor only a day or two ago, I go to it on the 6th of February.

Q And where is that?

A That's at Metro as well.

Q Okay. All right. Let's jump back to University Hospitals after the incident. You're treated at the hospital there?

A In the emergency room, yes.

Q And then you were released after a few hours?

A Yeah.

Q And these two police officers, are they with you the whole time?

A There were so many people in and out of the room. I don't remember them being in there beyond the initial.

Q And how did you get home that night?

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1 A I was driven home by the FOP president,
2 Captain Bentley.
3 **Q And how did you get your car?**
4 A I believe they -- two policemen brought
5 it to the house.
6 **Q And were you able to drive the next**
7 **day?**
8 A I did not drive the next day.
9 **Q What about the day after that?**
10 A No, I don't believe I -- I believe I
11 was in the house for probably a week or so.
12 **Q When did you return to work?**
13 A I want to say it might have been the
14 following Monday. The following Monday, you
15 know, give or take because I was on
16 administrative days, which is, you know,
17 it's kind of rule of thumb.
18 **Q When you say the following Monday, do**
19 **you mean -- so the incident happened on a**
20 **Saturday. Do you mean two days later or --**
21 A No.
22 **Q -- a week and two days?**
23 A Yeah, like that, around that time
24 frame.
25 **Q So the week you were in your house, how**

Page 246

1 **were you able to get food for yourself to**
2 **eat?**
3 A I had my father staying with me.
4 **Q Okay. And your father, was he able to**
5 **go out and get food for you?**
6 A Yeah.
7 **Q And did you leave the house at all that**
8 **week?**
9 A Not that I can recall, no.
10 **Q All right. Back at the hospital, do**
11 **you remember what you told the doctors that**
12 **happened?**
13 A No, I don't remember talking anything
14 with them.
15 **Q By the time you're at the hospital, did**
16 **you feel nauseous?**
17 A No.
18 **Q Do you know whether you had vomited?**
19 A I don't remember throwing up.
20 **Q Did you have blurry vision?**
21 A I don't know. My head was bothering me
22 a lot, my face. Everything was bothering
23 me. I don't remember specifics about was
24 this -- was I blurry or clear view, I don't
25 remember.

1 **Q Well, do you remember having a**
2 **headache?**
3 A Had a real bad headache.
4 **Q Real bad headache. Like on a scale**
5 **from 1 to 10?**
6 A 10, 10 plus.
7 **Q 10 plus. Did you feel dizzy?**
8 A I don't recall. I was sitting on the
9 bed.
10 **Q Were any of your teeth knocked out or**
11 **loose?**
12 A Not that I can recall, no.
13 **Q Do you recall whether any tests or**
14 **scans were performed at the hospital on you?**
15 A I believe a CAT scan.
16 **Q And by the time you were done at the**
17 **hospital, do you recall what the doctors**
18 **gave you as a diagnosis?**
19 A Well, paperwork, follow up with your --
20 with your primary care physician, Tylenol
21 for pain, that kind of thing.
22 **Q Right, but did they give you any kind**
23 **of medical diagnosis?**
24 A No, I don't remember any of that, no,
25 I'm sorry. I'm sorry. I thought that's

Page 248

1 what you meant.
2 **Q Is it your understanding that the**
3 **Cleveland -- that the City of Cleveland is**
4 **refusing to defend you and indemnify you in**
5 **this lawsuit?**
6 MR. PIKE: Objection.
7 Form, foundation.
8 A Yeah, that's my understanding.
9 **Q Have you tried to contest this?**
10 A No.
11 **Q Did you file a grievance to contest**
12 **this?**
13 A No.
14 **Q Do you intend to at any point?**
15 A I can't answer that, sir. I don't
16 know.
17 **Q Okay.**
18 MR. PIKE: Jeremy, I
19 can't hear testimony that's going
20 on.
21 MR. TOR: You know, I
22 think Nick has gone to address it,
23 so I'll wait until he comes back.
24 BY MR. TOR:
25 **Q Do you have -- did you ever obtain**

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1 **insurance coverage specifically for your**
 2 **work as a security guard at any of these**
 3 **private establishments?**
 4 A No.
 5 **Q Okay. Are you aware of whether such**
 6 **insurance exists?**
 7 A Not specifically, no.
 8 **Q Are you a member of the FOP?**
 9 A Yes.
 10 **Q How long have you been a member?**
 11 A Since I was promoted back in 2002.
 12 MR. TOR: All right.
 13 Give me a couple minutes. I just
 14 want to review my notes, see if I
 15 have any follow-up questions. Yeah,
 16 I guess I can pass the witness for
 17 now if anybody wants to ask
 18 questions.
 19 MR. PIKE: It's 10 to
 20 6:00.
 21 MR. DiCELLO: Want to go
 22 off the record and figure out what
 23 everybody wants to do?
 24 VIDEOGRAPHER: We're off the
 25 record.

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1 ---
 2 (Discussion had off the record.)
 3 ---
 4 VIDEOGRAPHER: We're back on
 5 the record.
 6 MR. TOR: Sir, I don't
 7 have any more questions at the
 8 moment. The understanding among the
 9 lawyers in the room is we'll adjourn
 10 for now, leaving open the deposition
 11 to be continued at a later date.
 12 Anyone want to put anything
 13 else on the record?
 14 MR. ROCHE: No.
 15 MR. PIKE: No.
 16 MR. LENEGHAN: No, that's
 17 fine. We're adjourning for now.
 18 You guys are completed and if
 19 cross-examination by the other
 20 parties commence, we can coordinate
 21 that and see where we go from
 22 there.
 23 MR. ROCHE: Agree.
 24 MR. PIKE: Agree.
 25 VIDEOGRAPHER: We're off the

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1 record.
 2 ---
 3 (Signature not waived)
 4 (Deposition adjourned at 5:48 p.m.)
 5 ---
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1 CERTIFICATE
 2
 3 THE STATE OF OHIO,)
 4) SS:
 5 COUNTY OF CUYAHOGA.)
 6
 7 I, Angelika P. Shane, a Notary Public
 8 within and for the state of Ohio, duly
 9 commissioned and qualified, do hereby
 10 certify that the within-named witness,
 11 SERGEANT DEAN GRAZIOLLI, was by me first
 12 duly sworn to testify to the truth, the
 13 whole truth and nothing but the truth in the
 14 cause aforesaid; that the testimony then
 15 given by the above-referenced witness was by
 16 me reduced to stenotype in the presence of
 17 said witness; afterwards transcribed, and
 18 that the foregoing is a true and correct
 19 transcription of the testimony so given by
 20 the above referenced witness.
 21 I do further certify that this
 22 deposition was taken at the time and place
 23 in the foregoing caption specified and was
 24 completed without adjournment.
 25

1 I do further certify that I am not a
2 relative, counsel or attorney for either
3 party, or otherwise interested in the
4 event of this action.

5 IN WITNESS WHEREOF, I have hereunto set
6 my hand and affixed my seal of office at
7 Cleveland, Ohio, this 7th day of March,
8 2019.

9
10
11
12 _____
13 Angelika P. Shane, Notary Public
14 Within and for the State of Ohio
15 My commission expires 6/21/20

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